694.

SUPREME COURT OF THE UNITED STATES.

No. 198.

LORETTA T. HUNTER, Plaintiff in Error,

vs.

WILLIAM H. GAINES AND MARIA GAINES, his Wife, ALBERT BELDING, HENRY BELDING AND GEORGE BELDING, Heirs and Legal Representatives of LUDOVICUS BELDING, Dec'd.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ARKANSAS.

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STATE OF ARKANSAS,
In the Supreme Court.

Be it remembered, that at a Supreme Court of the State of Arkansas, begun and held at the court-house in the city of Little Rock, on the first Monday, being the 6th day of July, A. D. 1857, before the Hon. Christopher C. Scott and the Hon. Thomas B. Hanley, Judges, were the following proceedings, on the 1st day of August of said term:—

LORETTA T. HUNTER, Appellant,
vs.
WILLIAM H. GAINES and WIFE, et al., Appellees.

Appeal from Hot Spring Circuit Court.

Be it remembered, that heretofore, to wit, on the 15 day of June, A. D. 1856, the said appellant filed in the office of the Clerk of said Supreme Court the transcript of the record of said court in this cause, which is in the following words:—

STATE OF ARKANSAS,
County of Hot Springs, sct.

In the Hot Spring Circuit Court, to the February Term thereof, 1854.

William H. Gaines, and Maria Gaines, his wife, formerly Maria Belding, Albert Belding, Henry Belding, and George Belding, plaintiffs in this suit, by attorney complain of Loretta T. Hunter, defendant herein, of a plea of ejectment.

For said plaintiffs declare and say, that heretofore, to wit, on the 20th day of December, A. D. 1851, at the county aforesaid, they, the said plaintiffs, were lawfully entitled to the possession of certain premises, with the appurtenances, situated in said County of Hot Springs, and within the jurisdiction of this court, to wit, a certain tract or parcel of land, known and described upon the plats of the public surveys as the southwest quarter of section thirty-three, in township two, south of range nineteen west, containing one hundred and sixty acres, together with the buildings, houses, improvements, privileges, appurtenances, and rights thereunto appertaining and *and* belonging; and said plaintiffs being so entitled to the possession thereof, the said defendant afterwards, to wit, on the day and year last aforesaid, at the county aforesaid, entered into the said premises and ejected the said plaintiffs therefrom, and unlawfully withholds from said plaintiffs the possession thereof.

2d. And said plaintiffs further declare and say, that heretofore, to wit, on the 20th day of December, A. D. 1851, at the county aforesaid, they, the said plaintiffs, were lawfully entitled to the possession of certain other premises and messuages, with the appurte-

nances, situated in said county of Hot Springs, and described as all that part of a certain tract or parcel of land designated on the public surveys as the southwest quarter of section thirty-three (33), in township two (2), south of range nineteen (19) west, which lies between a dividing line, sometimes known as Mitchell's line, heretofore established and observed by one Milas H. Wood and said Hale, between their respective possession, or said quarter section and the northern or upper line of a place in Hot Springs valley, commonly called Texas, and which part of said quarter section land includes and embraces all the buildings, houses, outhouses, lots, enclosures, and gardens connected with or pertaining to the tavern-stand sometimes and generally known as Hale's tavern stand, and now commonly known as Mrs. Hunter's tavern-stand, immediately below and south of *of* the premises used and occupied by Warren and Steadham as a tavern-stand during the summer of the year 1851; and the said plaintiffs being so entitled to the possession thereof, he, the said defendant, afterwards, to wit, on the day and year last aforesaid, at the county aforesaid, entered into the said premises and messuages, and ejected the said plaintiffs therefrom, and unlawfully withholds from said plaintiffs the possession thereof; wherefore said plaintiffs say they are injured, and have sustained damages to the sum of ten thousand dollars, and therefore they sue, &c. . CURRAN, *Att'y.*

WILLIAM H. GAINES and WIFE, ALBERT BELDING, HENRY BELDING, GEORGE BELDING,

vs.

LORETTA HUNTER.

Ejectment.

Declaration.

Filed, and writ issued, this 12th of January, A. D. 1854.

JNO. P. EMERSON, *Clerk.*

STATE OF ARKANSAS,

County of Hot Springs, ss.

The State of Arkansas to the Sheriff of Hot Spring County, greeting:—

You are hereby commanded to summons Loretta Hunter, if she be found within your bailiwick, to appear before the Judge of our Circuit Court of Hot Spring County, at the court-house in the county aforesaid, on the first day of our next February term, at a court to *to* be holden on the last Monday of February next, then and there to answer Wm. H. Gaines, and Maria Gaines, his wife, formerly Maria Belding, Albert Belding, Henry Belding, and George Belding, to a plea of ejectment, to the damage of said plaintiff of ten thousand dollars, and that you make due return of this writ to our said court.

In testimony whereof, I have hereunto set my hand as Clerk of said Circuit Court, and affixed the seal of office, this 12th day of

January, 1854, and of the independence of the United States the year. [L. S.] JNO. P. EMERSON, *Clerk.*

Came to hand January 25th, A. D. 1854.

JOSEPH JESTER, *Sheriff.*

I do certify, that I executed the within upon the within named Lorreta Hunter by copy, and her acknowledging service thereon, on the 28th day of January, 1854. JOSEPH JESTER, *Sheriff.*

THE STATE OF ARKANSAS,
County of Hot Springs.

At a Circuit Court begun and holden in and for the County of Hot Springs, in the State of Arkansas, at the court house in the town of Rockport, on the last Monday of February in the year of our Lord one thousand eight hundred and fifty-four, being the twenty-seventh day of said month. Present and presiding the Honorable John C. Murray, Judge of the Second Judicial Circuit of said State, Judge.

Pleas before the Hon'l John C. Murray, afterwards, to wit, on the day of 1854.

(This suit does not appear on the record at this term of the court, there being no proceedings had.)

STATE OF ARKANSAS,
County of Hot Springs.

At a Circuit Court begun and holden in and for the County of Hot Springs, in the State of Arkansas, at the court house in the town of Rockport, on the last Monday of August, in the year of our Lord eighteen hundred and fifty-four, being the twenty-eighth day of said month. Present presiding the Honorable Theodoric F. Sorrels, Judge of the Second Judicial Circuit of said State, Judge.

Pleas before the Honorable Theodoric F. Sorrels, afterwards, to wit, on the 28th (Monday) day of August, 1854, it being a subsequent day of said court.

132.

WILLIAM H. GAINES *et al.*
vs.
LORETTA T. HUNTER. } In Ejectment.

Came said parties, and by consent it is ordered that this cause be continued without prejudice.

STATE OF ARKANSAS,
County of Hot Springs.

At a Circuit Court begun and held in and for the County of Hot Springs, in the State of Arkansas, at the court house in the town of Rockport, on the last Monday of February, in the year of our Lord one thousand eight hundred and fifty-five, being the twenty-sixth day of said month. Present and presiding the Honorable Theodoric F. Sorrels, Judge of the Second Judicial Circuit of said State, Judge.

nances, situated in said county of Hot Springs, and described as all that part of a certain tract or parcel of land designated on the public surveys as the southwest quarter of section thirty-three (33), in township two (2), south of range nineteen (19) west, which lies between a dividing line, sometimes known as Mitchell's line, heretofore established and observed by one Milas H. Wood and said Hale, between their respective possession, or said quarter section and the northern or upper line of a place in Hot Springs valley, commonly called Texas, and which part of said quarter section land includes and embraces all the buildings, houses, outhouses, lots, enclosures, and gardens connected with or pertaining to the tavern-stand sometimes and generally known as Hale's tavern stand, and now commonly known as Mrs. Hunter's tavern-stand, immediately below and south of *of* the premises used and occupied by Warren and Steadham as a tavern-stand during the summer of the year 1851; and the said plaintiffs being so entitled to the possession thereof, he, the said defendant, afterwards, to wit, on the day and year last aforesaid, at the county aforesaid, entered into the said premises and messuages, and ejected the said plaintiffs therefrom, and unlawfully withholds from said plaintiffs the possession thereof; wherefore said plaintiffs say they are injured, and have sustained damages to the sum of ten thousand dollars, and therefore they sue, &c. . CURRAN, *Att'y.*

WILLIAM H. GAINES and WIFE, ALBERT BELDING, HENRY BELDING, GEORGE BELDING,

vs.

LORETTA HUNTER.

Ejectment.

Declaration.

Filed, and writ issued, this 12th of January, A. D. 1854.

JNO. P. EMERSON, *Clerk.*

STATE OF ARKANSAS,

County of Hot Springs, ss.

The State of Arkansas to the Sheriff of Hot Spring County, greeting:—

You are hereby commanded to summons Loretta Hunter, if she be found within your bailiwick, to appear before the Judge of our Circuit Court of Hot Spring County, at the court-house in the county aforesaid, on the first day of our next February term, at a court to *to* be holden on the last Monday of February next, then and there to answer Wm. H. Gaines, and Maria Gaines, his wife, formerly Maria Belding, Albert Belding, Henry Belding, and George Belding, to a plea of ejectment, to the damage of said plaintiff of ten thousand dollars, and that you make due return of this writ to our said court.

In testimony whereof, I have hereunto set my hand as Clerk of said Circuit Court, and affixed the seal of office, this 12th day of

January, 1854, and of the independence of the United States the year. [L. S.] JNO. P. EMERSON, *Clerk.*

Came to hand January 25th, A. D. 1854.

JOSEPH JESTER, *Sheriff.*

I do certify, that I executed the within upon the within named Lorreta Hunter by copy, and her acknowledging service thereon, on the 28th day of January, 1854. JOSEPH JESTER, *Sheriff.*

THE STATE OF ARKANSAS,
County of Hot Springs.

At a Circuit Court begun and holden in and for the County of Hot Springs, in the State of Arkansas, at the court house in the town of Rockport, on the last Monday of February in the year of our Lord one thousand eight hundred and fifty-four, being the twenty-seventh day of said month. Present and presiding the Honorable John C. Murray, Judge of the Second Judicial Circuit of said State, Judge.

Pleas before the Hon'l John C. Murray, afterwards, to wit, on the day of 1854.

(This suit does not appear on the record at this term of the court, there being no proceedings had.)

STATE OF ARKANSAS,
County of Hot Springs.

At a Circuit Court begun and holden in and for the County of Hot Springs, in the State of Arkansas, at the court house in the town of Rockport, on the last Monday of August, in the year of our Lord eighteen hundred and fifty-four, being the twenty-eighth day of said month. Present presiding the Honorable Theodoric F. Sorrels, Judge of the Second Judicial Circuit of said State, Judge.

Pleas before the Honorable Theodoric F. Sorrels, afterwards, to wit, on the 28th (Monday) day of August, 1854, it being a subsequent day of said court.

132.

WILLIAM H. GAINES *et al.*
vs.
LORETTA T. HUNTER. } In Ejectment.

Came said parties, and by consent it is ordered that this cause be continued without prejudice.

STATE OF ARKANSAS,
County of Hot Springs.

At a Circuit Court begun and held in and for the County of Hot Springs, in the State of Arkansas, at the court house in the town of Rockport, on the last Monday of February, in the year of our Lord one thousand eight hundred and fifty-five, being the twenty-sixth day of said month. Present and presiding the Honorable Theodoric F. Sorrels, Judge of the Second Judicial Circuit of said State, Judge.

Pleas before the Honorable Theodoric F. Sorrels, afterwards, to wit, on the 26th day of February (Monday) 1855.

132.

WILLIAM H. GAINES *et al.*
vs.
LORETTA T. HUNTER. } Ejectment.

Came the parties by attorney, and on motion and by consent it is ordered that this suit be continued.

STATE OF ARKANSAS,
County of Hot Springs.

At a Circuit Court begun and held in and for the county of Hot Springs, in the State of Arkansas, at the court house in the town of Rockport, on the last Monday of August, in the year of our Lord one thousand eight hundred and fifty-five, being the twenty-seventh day of said month. Present and presiding the Honorable Theodoric F. Sorrels, Judge of the Second Judicial Circuit of said State, Judge.

Pleas before the Honorable Theodoric F. Sorrels, afterwards, to wit, on Tuesday the 28th day of August, A. D. 1855.

(This case does not appear upon the record at this term, there being no proceedings had.)

Absent, the Honorable Theodoric F. Sorrels, Judge.

Present and presiding, Honorable John C. Murray, Special Judge.

Special Judge's Commission.

It is ordered that the commission of the special judge be spread upon the record of the court which is accordingly done, as follows:—

THE STATE OF ARKANSAS.

To all whom these presents shall come, greeting:—

Know ye that, reposing special trust and confidence in the ability, honesty, and law knowledge of John C. Murray, and by virtue of the authority in me vested by an act of the General Assembly of the State of Arkansas, entitled "An act making appropriations for the years eighteen hundred and fifty-five, eighteen hundred and fifty-six, and part of the year eighteen hundred and fifty-four, and for the balance due from the State," approved January 12th, 1855, I, Elias N. Conway, Governor of the State of Arkansas, do hereby appoint and commission him, the said J. C. Murray, Special Judge of the Circuit Court, to adjudicate, try and determine certain cases pending in the Circuit Court in Hot Springs County, in the Second Judicial Circuit, in the State of Arkansas, from adjudicating which causes T. F. Sorrels, Judge of the Second Judicial Circuit of said State, has certified to me that he is disqualified by law, which causes are entitled as follows, to wit: W. H. Gaines and Marie Gaines, his wife, formerly Maria Belding, Albert Belding, Henry Belding and George Belding, by his guardian, *vs.* Henry M. Rector and William

Steadham; Same *vs.* John C. Hale; Same *vs.* James Sumpter; Same *vs.* Harrison D. Flowers; Same *vs.* Richard Puckett; Same *vs.* Patrick Burke; Same *vs.* Loretta T. Hunter; Same *vs.* Edmund Miles; Same *vs.* Jacob W. Parker; Same *vs.* Abram Kempton. He, the said John C. Murray, is therefore hereby authorized to do and perform all and singular the duties incumbent on him as Special Judge of the Circuit Court for the trial and determination of the causes aforesaid, according to law and the trust reposed in him.

In testimony whereof, I have hereunto set my hand, caused the seal of the State of Arkansas to be affixed, at Little Rock, this 15th day of August, in the year of our Lord eighteen hundred and fifty-five, and of the Independence of the United States 80th year.

By the Governor, [SEAL.] ELIAS W. CONWAY.
D. B. GREER, *Secretary of State*,
By RICHARD H. JOHNSON,
Deputy Secretary of State.

THE STATE OF ARKANSAS,
County of Hot Springs.

At a Circuit Court begun and holden in and for the County of Hot Springs, in the State of Arkansas, at the court house in the town of Rockport, on the last Monday of February, in the year of our Lord eighteen hundred and fifty-six, being the twenty-fifth day of said month. Present and presiding, the Honorable Theodoric F. Sorrels, Judge of the Second Judicial Circuit of said State, Judge.

Proceedings had afterwards, to wit, on Wednesday, February 27th, A. D. 1856.

Absent, the Honorable Theodoric F. Sorrels, Judge.

Present and presiding, the Honorable John C. Murray, Special Judge.

Pleas before the Honorable John C. Murray on said day.

WILLIAM H. GAINES and MARIA, his wife, ALBERT BELDING, HENRY BELDING and GEORGE BELDING, Pl'ff,
vs.
LORETTA HUNTER, Deft.
} 132. Ejectment.

On this day came the parties, plaintiffs and defendants, by their respective attorneys, and the said defendant entered her plea of not guilty herein, to which the plaintiffs join issue, all in short, by consent, upon the record, and thereupon the said defendants presents and filed her motion and affidavit for continuance in this cause.

Hot Springs, sct.

In Hot Springs Circuit Court, February Term, A. D. 1856.

WILLIAM H. GAINES *et al.*, Pl'ff,
vs.
LORETTA HUNTER, Deft.

And the said defendant comes and moves *and moves* the Court to

continue this case until the next term of this Court, for the reasons set forth in the accompanying affidavit.

WILLIAM D. FLANIGIN, *Att'y.*

STATE OF ARKANSAS,
County of Hot Springs, ss.

I, Loretta T. Hunter, duly sworn, do depose and that I am not ready to go to trial in the case of William H. Gaines *et al.*, plaintiffs, and I am defendant, for the reasons following :—

First. I believe it is important and material to the defence in the case to produce the original or certified copies of a New Madrid certificate issued to Francis Langlois, and survey made under such certificate, which certificate was located on the property sought to be recovered in this suit, prior to any claim of the plaintiffs' ancestor, and which claim or title is held adverse to the plaintiffs. That said certificate and survey has been present at several of the proceeding terms of this Court, and the holder and owner of said certificate and those claiming under this affiant landlord have heretofore acted together in defending against the claims of the plaintiffs, and this affiant had every reason to believe and did believe that said certificate and survey would have been present before this Court, and she now believes that said papers would have been here but for the reason that Henry M. Rector, the owner of said claim, is now detained home by a sick family.

That she is assured by her counsel that he (her counsel) has spoken while at Little Rock (where said certificate is) with said Rector's counsel in relation to the production of said papers at this Court to be used in this and other cases, and that it was a mutual understanding that said papers would be present to be used in this case.

That she can only state facts, but is informed that the papers aforesaid show a legal claim as against the plaintiffs; that she believes that said papers or other authentic copies can be procured by the next term of this Court.

Secondly. That this affiant also defends on the grounds that this affiant's landlord is the owner of a valid pre-emption.

That the certificate issued to the plaintiffs is not a valid certificate, properly issued, but that the same was issued upon insufficient testimony. That in order to establish the above facts, it is material to have in this Court the testimony offered and received at several times touching the pre-emption claimed by this affiant's landlord, and the pre-emption upon which the certificate issued the plaintiffs' was granted.

That this affiant's landlord (who is also her father) as her agent, caused copies of all said testimony to be taken at the office of the Commissioner of the General Land Office, and duly certified, to make them testimony, and had them transmitted to the clerk of this Court, who received them and placed them in his office, where they remained until some time during or since the last term of this Court,

and this affiant supposed the papers aforesaid still were there, until during the present term of this Court, when she found they were missing from said office.

That she is informed and believes said testimony clearly proved that John Percifull (under whom the defendant's landlord claims) had a valid pre-emption to the land sued for under the act of April 12th, 1814, and that all requisite steps were taken in order to perfect said pre-emption under the act of Congress authorizing claims to be perfected (of that kind), passed in 1843.

That he, John Percifull, inhabited and cultivated said tract prior to and at the time of the passage of said act, and never did remove from the Territory of Missouri, within which said land were situated. That due and legal notice of said pre-emption was made, and proof thereof was fully made according to the laws governing the same. That said depositions further proved that the plaintiffs or their representatives wholly failed to prove their pre-emption if they had one within the limitation prescribed by the act creating the same.

Thirdly. That the matter in litigation is of the utmost importance to this defendant. That the leading questions to be decided in this case are involved in a case decided in this Court (Gaines *et al. vs.* Burke), and which case is now pending in the Supreme Court of the United States, and which case will probably be decided before the next term of the Court.

Fourthly. She defends on the grounds that said certificate being public in character and form, it has no force except by the approval of the Department of the Interior. This affiant's landlord has caused an application to be made to the proper department to supersede, cancel, or recall the certificate issued to the plaintiffs. That she verily believes said decision has not been made, for the reason that the suit aforesaid is still pending, and that a decision will be made thereon as soon as said Court shall decide said case.

That he has written for copy of the decision to be made on said application, which request was forwarded in time to get an answer at this Court, but has received no answer thereto.

That from an opinion of the attorney-general she believes, and thinks she has reason to believe, said certificate will be recalled. That, so far as affiant knows or believes, the facts desired as aforesaid cannot be established by any other witnesses or testimony present, or which can be produced at the present term of this Court. That the whole is material to her defence, and to have the right determined by this and the reviewing (?) Courts.

That she has anxiously desired and endeavored to be ready for trial in this case, and the causes offered for a continuance exist without her assent or connivance.

That this continuance is not asked for the purpose of delay, but that justice may be done, and that she believes all of said facts can be proven and established by the next term of this Court.

WILLIAMS & FLANAGIN, *Att'y.*

Sworn to and subscribed before me, Feb. 27th, 1856,
ROBERT STRIBLING, *J. P.*

WILLIAM H. GAINES *et al.*
vs.
LORETTA HUNTER. } 132.

Dep't mo. to continue. Filed Feb. 27th, 1856.
JOHN P. EMERSON, *Clerk.*

Which on consideration thereof is overruled by the Court as to all except the first ground for continuance therein stated, being the absence of certain papers and evidences respecting a New Madrid location on the land in controversy, and which papers were alleged to be in the possession of one Henry M. Rector, and was sustained by the Court as to said first ground, whereupon the said plaintiffs represented to the Court that a true copy of all such papers and evidences is set forth and contained in the bill of exception taken and reserved at the last August term of this Court by the defendants in an action of ejectment there pending between these plaintiffs and the said H. M. Rector and Wilson Steadham, defendants, and now remaining on file in said cause, and said plaintiffs now agreeing that the said defendants herein might use all such papers and evidences as set forth in said bill of exceptions with like effect as though the original of such papers or evidences were again produced before the Court. It is ordered that said defendant proceed to trial with permission to use such papers and evidences in the manner aforesaid, and thereupon came a jury, to wit: Jesse Moore, Lewis Calley, Wiley A. Ward, Tilghman H. Cloud, Andrew P. Sanders, Samuel F. Gentry, William C. Stribling, Thomas Burton, Martin Ward, and John W. Staggs, John M. McCullah, De Kalb Fulton, twelve good and lawful men of the County of Hot Springs, who being duly elected, empanelled, and sworn, well and truly to try the issues joined herein, and a true verdict to render according to the evidence, and who, after hearing a part of the evidence adduced, were adjourned until to-morrow morning at the meeting of Court.

Proceedings had on Thursday, February 28, 1857, it being a subsequent day of said term.

Absent, the Honorable Theodoric F. Sorells, Judge.

Present, the Honorable John C. Murray, Special Judge.

WILLIAM H. GAINS and MARIA GAINS, his wife, ALBERT BELDING, HENRY BELDING, and GEORGE BELDING, plaintiffs,
vs.
LORETTA HUNTER, defendant.

132. Ejectment.

Came again the plaintiffs and defendants, by their respective attorneys and the jurors aforesaid, as on yesterday, and the evidence being completed, and the jury having heard the arguments of counsel, and the instructions of the Court returned, consider of their ver-

dict, and returned into Court here the following verdict, to wit: We the jury find the defendant guilty of the trespass within described, except a double log-house and lot occupied by Cyrus A. Hale, and two rooms occupied by John C. Hale, respectively, at the time of the commencement of this suit, and within the boundaries of the possession described in the second count of the within declaration, and assess the plaintiffs' damages to the sum of twenty-two hundred and fifty dollars, say 2250 00—Wiley A. Ward, foreman; and which verdict, in the words and figures aforesaid, was indorsed on the declaration in this behalf. It is therefore considered by the Court that said plaintiffs, William H. Gains and Maria Gaines, his wife, Albert Belding, Henry Belding, and George Belding, do have and recover of and from the said defendant, Loretta T. Hunter, as well the possession of the lands and premises described in said declaration as all that part of a certain tract or parcel of land designated on the public surveys as the southwest quarter of section thirty-three, in township two, south of range nineteen west, which lies between a dividing line sometimes called Mitchell's line, heretofore established and observed by Woods and Hale between their respective possessions and said quarter section, and the northern or upper line of a place in the Hot Spring Valley, commonly called "Texas," and which part of said quarter section of land includes and embraces all the buildings, houses, out-houses, and lots, inclosures, and gardens, connected with or pertaining to the tavern-house sometimes and generally known as Hale's tavern-stand, and at the time of the commencement of this suit, to wit, January 12th, 1854, commonly known as Mrs. Hunter's tavern-stand, immediately below and south of the premises used and occupied by Warren and Steadham as a tavern-stand during the summer of the year A. D. 1851, excepting there from the double log-house and lot aforesaid occupied by Cyrus Hale, and the two rooms occupied by John C. Hale, as found by said verdict, and said sum of two thousand two hundred and fifty dollars, so as aforesaid assessed by the jury for their damages by them sustained in this behalf, as also all their cost in the behalf expended, to be taxed, &c.; and it is ordered that said plaintiffs have execution hereof by writ of possession for said lands and premises, with command to levy and collect the damages and cost aforesaid as by law in such case provided.

During the progress of this trial, the said defendant filed two separate affidavits of John C. Hale, to lay the foundation of secondary evidence.

STATE OF ARKANSAS,
County of Hot Springs, ss:

I, John C. Hale, do solemnly swear that the original lease from John Percifull to Ludovicus Belding, or, rather, acknowledgment of tenancy upon the part of Ludovicus Belding to and from John Perciful, dated April 2, 1831, is not in my custody, or under my control, and that I have made search for it and cannot find it; but the

same was forwarded to the General Land Office at Washington, D. C., and he believes the same was there last, a copy of which is now produced. J. C. HALE.

Sworn to Feb. 28th, A. D., 1856.

JOHN P. EMERSON, *Clerk.*

132. *Affidavit of John C. Hale.*

Filed Feb. 27th, 1856. JOHN P. EMERSON, *Clerk.*

STATE OF ARKANSAS,
County of Pulaski.

I, John C. Hale, do solemnly swear that the deed executed in duplicate between Henry M. Rector and John C. Hale on the 11th day of May, 1843, although executed in duplicate, the acknowledgment thereof was never attested and signed by the magistrate taking the same on any but one of said duplicates, which was delivered to Henry M. Rector, and is now under his control and in his custody, and affiant is unable to procure the same from said Henry M. Rector, and did not know until after the commencement of this trial that there was any objections to his duplicate, and his subscribing witnesses are absent.

So help me God. J. C. HALE.

Sworn to before me, on this 28th February, 1856.

JOHN P. EMERSON, *Clerk.*

132. 2d affidavit of John C. Hale, filed Feb. 28th, 1856.

JOHN P. EMERSON, *Clerk.*

And pending the trial hereof the said defendant excepted to sundry rulings and decisions of the Court, and asked and obtained leave until a future day of this term to prepare and tender her bill of exceptions in respect thereof.

Proceedings had on Friday, February 29, 1856, before the Honorable John C. Murray, special Judge.

WILLIAM H. GAINES *et al.*
vs.
LORETTO F. HUNTER. } 132. Ejectment.

Came again the parties, and the defendant prays an appeal to the Supreme Court, and the plaintiffs waive the necessity of affiant, and the appeal is granted.

On motion it is ordered that the defendant have leave to enter into recognizance with Cyrus S. Hale, Robert Stribling, George B. Chandler, and William C. Stribling, her securities, in the sum of five thousand dollars, conditioned according to law.

Whereupon said Loretta Hunter, Cyrus S. Hale, Robert Stribling, George B. Chandler, and William C. Stribling, acknowledged themselves indebted to William H. Gains, and Maria Gains, his wife, Albert Belding, Henry Belding, and George Belding, in the sum of five thousand dollars, to be levied of their goods and chattels, lands

and tenements; to be void on condition that said Loretta Hunter will prosecute her appeal with due diligence to a decision of the Supreme Court, and that if the decision appealed from is affirmed, or her appeal dismissed, she will pay whatever of debt, damages, and costs have been recovered against her by the judgment of the Circuit Court, together with the interest that shall accrue thereon, or that she will otherwise perform the judgment of the Circuit Court, and will also pay the costs and damages that may be adjudged against her in the Supreme Court upon her appeal; otherwise to remain in full force and virtue.

Proceedings had on Saturday, March the 1st, A. D. 1856, it being a subsequent day of said term.

Absent, the Honorable Theodoric F. Sorrels, Judge.

Present, the Honorable John C. Murray, special Judge.

WILLIAM H. GAINES and others
vs.
LORETTA T. HUNTER. } 132. Ejectment.

Came the parties by attorney, and, on the leave granted, the defendant tenders her bill of exceptions, which is signed, sealed, and ordered of record herein.

HOT SPRINGS, *sct.*

In Hot Springs Circuit Court, to February Term, A. D. 1856.

WILLIAM H. GAINS, MARIA GAINS, ALBERT BELDING, HENRY BELDING, and GEORGE BELDING, plaintiffs,

vs.

LORETTA T. HUNTER, defendant.

Ejectment.

Be it remembered, that on this twenty-seventh day of February, A. D. eighteen hundred and fifty-six, before the Honorable John C. Murray, special judge appointed to try this and other cases in the Circuit Court of Hot Springs County, in the State of Arkansas, at the February term of said court in said year, a certain case came on to be heard, wherein Wm. H. Gains, and Maria Gains, his wife, Albert Belding, Henry Belding, and George Belding, were plaintiffs, and Loretta T. Hunter was defendant, it being an action of ejectment; and at the calling of said cause, said defendant made and filed an application for a continuance, which was in the words and figures following, to wit:—

HOT SPRINGS, *sct.*

In Hot Spring Circuit Court, to Feb. term, A. D. 1856.

WILLIAM H. GAINS *et al.*, pl'ffs,
vs.
LORETTA HUNTER, def't.

And the said defendant comes and moves *and moves* the Court to continue this case until the next term of this court, for the reasons set forth in the accompanying affidavit.

WILLIAMS & FLANAGIN, *At'ys.*

STATE OF ARKANSAS,
County of Hot Spring, ss.

I, Loretta Hunter, being duly sworn, do depose and say, that I am not ready to go to trial in the case of William H. Gaines *et al.*, plaintiffs, and I am defendant, for the following reasons: First. I believe it is important and material to the defence in this case to produce the original or certified copies of a New Madrid certificate, issued to Francis Langloise, and survey made under said certificate, which certificate was located on the property sought to be recovered in this suit prior to any claim of the plaintiff's ancestors, and which claim or title is held adverse to the plaintiffs.

That said certificate and survey has been present at several of the preceding terms of this court, and the holder and owner of said certificate, and those claiming under this affiant's landlord, have heretofore acted together in defending against the claim of the plaintiff; and this affiant had every reason to believe, and did believe, that said certificate and survey would have been present before this court, and she now believes that said papers would have been here but for the reason that Henry M. Rector, the owner of said claim, is now detained at home by a sick family.

That she is assured by her counsel that he (her counsel) has spoken, while at Little Rock (where said certificate is), with said Rector's counsel, in relation to the production of said papers at this Court, to be used in this and other cases, and that it was a mutual understanding that said papers would be present to be used in this case.

That she can only state facts, but is informed that the papers aforesaid show a legal claim as against the plaintiffs. That she believes said papers, or other authentic copies, can be procured by the next term of this Court.

Secondly. That this affiant also defends on the grounds that this affiant's landlord is the owner of a valid pre-emption.

That the certificate issued to the plaintiff is not a valid certificate, properly issued, but that the same was issued upon insufficient testimony. That, in order to establish the above facts, it is material to have in this Court the testimony offered and received at several times, touching the pre-emption claimed by this affiant's landlord, and the pre-emption upon which the certificate issued the plaintiff was granted.

That this affiant's landlord (who is also her father), as her agent, caused copies of all said testimony to be taken at the office of the Commissioner of the General Land Office, and duly certified, to make them testimony, and had them transmitted to the clerk of the Court, who received them and placed them in his office, where they remained until some time during or since the last term of this Court, and this affiant supposed the papers aforesaid still were there, until during the present term of this Court, when she first found they were missing from said office.

That she is informed and believes said testimony clearly proves

that John Percifull (under whom the defendant's landlord claims) had a valid pre-emption to the land sued for, under the act of April 12th, 1814, and that all requisite steps were taken in order to perfect said pre-emption under the act of Congress authorizing claims to be perfected (of that kind), passed in 1843.

That he, John Percifull, inhabited and cultivated said tract prior to and at the time of the passage aforesaid act, and never did remove from the Territory of Missouri, within which said lands were situated. That due and legal notice of said pre-emption was made, and proof thereof was fully made according to the law governing the same.

That said depositions further prove that the plaintiffs, or their representatives, wholly failed to prove their pre-emption, if they had one, within the limitation prescribed by the act creating the same.

Thirdly. That the matter in litigation is of the utmost importance to this defendant. That the leading questions to be decided in this case are involved in a case decided in this Court (Gaines *et al. vs.* Burke), and which case is now pending in the Supreme Court of the United States, and which case will probably be decided before the next term of this Court.

Fourthly. She defends on the grounds that said certificate being peculiar in character and form, it has no force, except by the approval of the Department of the Interior.

This affiant's landlord has caused an application to be made to the proper department to supersede, cancel, or recall the certificate heretofore issued to the plaintiffs, that she verily believes said decision has not been made, for the reasons that the suit aforesaid is still pending, and that a decision will be made thereon as soon as said Court shall decide said case.

That he has written for a copy of the decision to be made on said application, which request was forwarded in time to get an answer at this Court, but has received no answer thereto.

That from an opinion of the Attorney-General she believes, and thinks she has reason to believe, said certificate will be recalled. That, so far as affiant knows or believes, the facts desired as aforesaid cannot be established by any other witnesses or testimony present, or which can be procured at the present term of this Court. That the whole is material to her defence, and to have her rights determined by this and the reversing Courts.

That she has anxiously desired and endeavored to be ready for trial in this case, and the causes offered for a continuance exist without her assent or connivance.

That this continuance is not asked for the purpose of delay, but that justice may be done, and that she believes all of said facts can be proven and established by the next term of this Court.

WILLIAMS & FLANAGIN, *Att'ys.*
LORETTA T. HUNTER.

Sworn to and subscribed before me, Feb. 27th, 1856.

ROBERT STRIBLING, *J. P.*

Endorsement on Motion.

W. H. GAINES *et al.*
vs.
LORETTA HUNTER. } 160.

Defendants moved to continue.
Filed Feb. 27, 1856. JNO. P. EMERSON, *Clerk.*

Which motion on argument of counsel was submitted to the Court, and the Court declared that these last causes, as mentioned in said affidavit, were insufficient, and intimated an opinion that the first cause, as set forth in said affidavit, was sufficient when the plaintiffs' counsel declared that there exist among the files of this Court, in the bill of exception taken in a case wherein the plaintiffs in this suit were plaintiffs, and Henry M. Rector, and Wilson Steadham, were defendants, a correct copy of the New Madrid certificate and survey made in relation thereto, which the plaintiffs would consent should stand in all things in place of the original, and should be offered without other objections than those to which the original would be subject. Whereupon the Court overruled and refused said application for a continuance, to which opinion and judgment of the Court, in overruling and refusing said application for a continuance, the defendant at the time excepted, and asked for time to prepare his bill of exceptions, which is granted him, and immediately a jury being empanelled, the plaintiffs produced and offered (in evidence together) a certificate and transcript in the words and figures following, to wit:

No. 6545.

RECEIVER'S OFFICE AT WASHINGTON, ARKANSAS,
December 19*th*, 1851.

Received from Maria Gaines, wife of Wm. H. Gaines, formerly Maria Belding, Albert Belding, Henry Belding, and George Belding, the heirs and legal representatives of Ludovicus Belding, deceased, of Hot Springs County, in the State of Arkansas, the sum of two hundred dollars, in full for the southwest quarter of section thirty-three (33), in township two (2), south of range nineteen (19) west, containing one hundred and sixty acres, according to the return of the Surveyor-General, at $1 25 per acre.

According to instruction, I note that this entry interferes with the New Madrid location of Francis Langlois, on the same lands, and also that it embraces lands directed to be reserved by the act of Congress of 20th April, 1832, and is only permitted to be made under the decision of the Secretary of the Interior, under date of November 21st, 1851, and the instruction of the Commissioner of the General Land Office, under date of November 25th, 1851, in accordance with said decision.

B. T. HEMPSTEAD, *Receiver.*

GENERAL LAND OFFICE,
November 25th, 1851.

GENTLEMEN: The papers accompanying your letter of the 18th and 24th March last, in reference to the claim to the Hot Springs in Arkansas, having been submitted to the Secretary of the Interior for his action on the legal point in the case, to wit, the reservation of the land by Congress, they were returned to this office for its decision on the respective merits of the pre-emption claims, irrespective of this question.

On the 26th of August last, this office returned the papers with its decision adverse to the claim of the heirs of John Percifull, and in favor of that of the heirs of Ludovicus Belding, it agreeing with you both as to the establishment of the facts of cultivation in 1829, and possession on the 29th day of May, 1830, and regarding the objections of the Receiver founded upon the opinion that those acts were performed as the tenant of another, as not effecting the validity of the claim.

On the 14th ult. this office received the opinion and decision of the Secretary of the Interior dated the 10th of the month, in which he sustains the existing validity of the act of the 20th April, 1832, it not having been repealed or affected by any subsequent law, and that therefore none of the claims preferred for the land are of any legality. On said 14th ult. an application was made by the attorney of the heirs of Belding for permission to make an entry of said claim in order that they may be placed in a proper position for the assertion of their right hereafter in the courts, stating of converse under the decision of the secretary she should not ask for a patent.

This was refused by this office, and appeal from that action taken to the Secretary of the Interior, who, on the 21st inst., addressed to this office a letter, a copy of which is herewith enclosed.

In accordance with the direction of the secretary therein contained, you are instructed to permit the heirs of Ludovicus Belding to make payment for the southwest quarter of sec. 33, T. 2 S., R. 19 W., as containing 160 acres, and in addition to the ordinary entry thereof upon your books, and the return to this office, you will note the fact of its interfering with the New Madrid location of Langlois; of its embracing land directed to be reserved by act of 20th April, 1832, and that said entry is permitted under the secretary's decision of the 21st of November, A. D. 1851. Similar annotation will be made on the receiver's receipt and register's certificate.

Respectfully,
Your ob'd't servt,
J. BUTTERFIELD,
Commissioner.

Register and Receiver, Washington, Ark.

DEPARTMENT OF THE INTERIOR, WASHINGTON, D. C., *Nov.* 21*st*, 1851.

Sir: Upon consultation with the attorney general, and after full consideration of the application of A. H. Lawrence, Esq., attorney for the heirs of Ludovicus Belding, one of the claimants of the Hot Springs of Arkansas, on appeal from your decision of the 15th ultimo, against permitting said heirs to make an entry under the act of the 29th May, 1830, and 14th July, 1832, I have concluded that it will be proper and in accordance with precedents to permit them to do so, and you will therefore instruct the register and receiver accordingly. Said entry will remain subject to the same power of revision and control of the General Land Office, and this department, as may be lawfully exercised over any ordinary entry. The government will still hold the ultimate power of protecting its own right, while the claimants will be merely placed in a position to contest the adverse claims of others to the same land.

I am, sir, very respectfully,
Your ob'd't serv't,
ALEX. H. H. STUART, *Secretary.*

To the Commissioner of the General Land Office.

No. 6545.

LAND OFFICE, WASHINGTON, ARK., *Dec'r* 19*th*, 1851.

We, Maria Gaines, wife of Wm. H. Gaines, late Maria Belding, Albert Belding, Henry Belding, and George Belding, heirs and legal representatives of Ludovicus Belding, deceased, of Hot Springs County, Ark., do hereby apply to purchase the southwest quarter of section thirty-three (33) in township two (2) south of range nineteen west, as containing one hundred and sixty (160) acres, for which we have agreed with the register acting under instruction from the Commissioner of the General Land Office, bearing date 25th of November, 1851, to give at the rate of one dollar and twenty-five cents per acre.

A. BELDING,
MARIA GAINS,
HENRY BELDING,
GEORGE BELDING.

I, William H. Etter, Register of the Land Office at Washington, Arkansas, do hereby certify that the tract above mentioned is sold as containing one hundred and sixty acres as mentioned above, and the price agreed upon is one dollar and twenty-five cents per acre.

W. H. ETTER, *Register.*

Note.—In accordance with instructions, I note the interference of this entry with the New Madrid location of Langlois, of its embracing land directed to be reserved by act of the 20th of April, 1832, and that the entry is permitted to be made under the decision of the Secretary of the Interior of the 21st of November, 1851, transmitted to this office by the Commissioner of the General Land Office, under date of the 25th of November, 1851. WM. H. ETTER, *Register.*

REGISTER'S OFFICE, WASHINGTON, ARK'S, *Jan'y* 19, 1852.

I, William H. Etter, Register of the Land Office at Washington, Arkansas, hereby certify that the foregoing pages contain a true copy of the letters received from the Commissioner of the General Land Office, the application filed and the annotation on the tract book in this office under said instructions.

WM. H. ETTER, *Register.*

(The defendant admitting the signatures of Hempstead and Etter to be genuine) to the admission of which papers as evidence the defendant objected, and the Court overruled the objection of said defendant and admitted said papers as evidence, to which opinion of the Court in overruling said objection and admitting said papers as evidence, the defendant at the time excepted and asked for time to prepare his bill of exception, which is granted him.

Thereupon the defendant admitted the plaintiffs, Maria, Albert, Henry, and George, are all children and heirs at law of Ludovicus Belding, deceased, and that William H. is, and was at the commencement of this suit, the husband of the plaintiff Maria.

Lawson Runyan, a witness, was sworn, and testified on the part of the plaintiff that I am acquainted with the locality of the Hot Springs Valley and the quarter section on which they are situated, and have been for twenty-one years. The line called Mitchell's line is the division line made between John C. Hale and Milus H. Wood. Hale's possession extended from Mitchell's line to the south line of quarter section. At the commencement of this suit, Mrs. Hunter had possession of the tavern stand; she had possession from that land held by Steadham down to what is called Texas, except one house and lot, occupied by Cyrus Hale. She had all of what is called Hale's Tavern Stand except the one house and lot. It was afterwards known as Mrs. Hunter's Tavern. The improvement consisted of a line one-story building, commencing at Mitchell's line; and next to them was a two-story building; next came one-story building, with two rooms; then another large two-story building; then a garden and stable; on the other side of the street there was a dining room, other rooms, smoke-house, store-house, bath-house, kitchen, and some cabins. The plaintiff asked the witness what was the value of the rent per annum of the property from the commencement of the suit until this time; to which question the defendant, at the time, objected, and the Court overruled said objection, to which opinion of judgment, in overruling said objection, and permitting said objection to be put, the defendant, at the time, excepted, and asked for time to prepare his bill of exception, which was granted him, and said witness stated the *the* rent of said land was worth two thousand dollars per annum.

Thursday. Said witnesss further stated that he estimated that the rent for buildings (except for certain buildings which he is not certain were in defendant's possession at the time suit was brought)

was worth fifteen hundred dollars per annum. He thinks Mrs. Hunter had possession of all property mentioned in the second count, except a small building occupied by Cyrus Hale, but is not certain that she was in possession of another room, occupied by John C. Hale, and the billiard-room and bar-room. The defendant occupied the premises above described on the 12th January, A. D. 1854.

Cross-examination: I have known the premises since 1834. Since January 12, 1854, the premises have been improved, but to what extent I cannot say; perhaps the stable has been built since. I think a part of the bath-house has been built since. The larger building was partly occupied, but unfinished at that time. I cannot say what bath houses were built, but thinks not all; the stable would rent for $100, and it would make a quarter difference in the rent of the tavern. The bath houses are essential to the profitable occupation of a tavern at that place; and addition of 12 feet has been made to the store, and a new warehouse built since the suit; it would increase the rent sixty dollars per annum. The absence of the stables at the tavern stand would lessen the rent $130. A stable is necessary to a tavern there, and a fair rent would not compensate for their absence.

I have seen Mr. Anderson at work on the premises, and he must work considerable since the commencement of this suit. Saw, if not since the commencement of this suit, a short time before, that the big house was not finished. Its being finished would make a difference in the rent of $150 or $200. Thinks, but not sure, a kitchen and meat house has been built since the suit. They would rent from $60 to $72 per annum. The difference between the tavern with the bath houses and without them, with the liberty of building, would be equal to 10 per cent.; but without the liberty of building them, would be equal to 20 per cent.

The taverns at Hot Springs are kept to enable persons to bathe in the hot water. Since the commencement of this suit the dining-room has been repaired by a new floor and sills. Question by defendant: As whose tenant did the defendant occupy the premises? To which question the plaintiff objected, and the Court refused to permit the question to be put during cross-examination; to which opinion of the Court in refusing to permit said question the defendant at the time excepted, and asked for time to prepare his bill of exceptions, which was granted him. Question by defendant: Who was in occupation of the premises Dec. 19th, 1851, and before, and whose property was the improvements when it was entered Dec. 19, 1851? To which question the defendant objected, and the Court sustained said objection for the reason that it was asked during a cross-examination, and also because the defendant had not shown title in any one other than the plaintiffs; to which opinion of the Court in sustaining said objection and refusing to permit said question to be put, the defendant at the time excepted, and asked for time to prepare his bill of exceptions, which is granted him.

Witness further testifies: I estimate rent from the way in which taverns and premises are rented there. I did not include in the estimate the value of the furniture. Taverns with furniture rent higher than I have estimated.

Re-examination.—Twelve hundred dollars would be a low rent for the buildings occupied by Mrs. Hunter in 1854. Fifteen hundred dollars would be a low rent for the premises with the improvements which had been made for the year 1855.

Wilson Steadham sworn, and testified that he was acquainted with Hot Springs Valley since 1850. Hale had possession of that part from Rector's possession to Texas line in 1854 and 1855. Mrs. Hunter had possession of all of the above, except the double log cabin near the Texas line. She was in possession of the whole premises. I paid for similar premises, in 1854, $23,50. Those that she had was worth as much. The property without furniture would have been worth $2,000.

Cross-examination.—The cost of furnishing the house would have been $2,000 or more. I make the estimate that the landlord furnishes the furniture. If the furniture was not furnished by the landlord twenty per cent. ought to be deducted. I would think the rents worth $22.00 or $23,00, deducting 20 per cent. I think there was a stable when suit was brought, and a new one was put up before the old one was torn down. Mrs. Hunter was not in possession of the double log cabin included in the second count. Mr. Hale occupied with his family two or three rooms. The billiard-room was in possession of Bass and the defendant, he believes, in 1855: in 1854, she was in possession of the billiard-room. Mr. John C. Hale's rooms were opposite the drawing-room. Mrs. Hunter was John C. Hale's tenant. The rooms put up before 1854. My estimate of the rest included the rooms occupied by Hale, billiard-rooms, and bar-room. The rooms occupied by Hale were worth $120 to $144 per annum. I do not include the store in the estimate of rent. I do not rent the store. My contract with Rector was, if I did repair, it was at my expense. I built a house which cost $1500, and was allowed $1,000, and afterwards my rent was increased $100 per year. Mrs. Hunter gave up possession, and I took possession about the first November, A. D. 1855. Mrs. Hunter was Mr. Hale's tenant.

Whereupon the plaintiffs announced that they closed for the present, and the defendant offered to read a petition of John C. Hale to perpetuate testimony, the order of the Judge of the Circuit Court of Hot Springs County in the State of Arkansas, together with the didimus, notice, and deposition of Thomas Woodward, Adam Stroud, and James Neal, which are in words and figures following, to wit:—

To the Honl. John C. Murray, Judge of the Hot Spring Circuit Court, of the State of Arkansas.

Your petitioner, John C. Hale, would respectfully show unto your

honor that he is one of the claimants of the southwest quarter of section thirty-three, in township two, south of range nineteen west, in the County of Hot Springs, upon which the Hot Springs are situated, under and by virtue of the pre-emption of John Percifull, deceased, which quarter section is also claimed by Henry M. Rector, under a New Madrid location, and by William H. Gains and wife, and the other heirs of Ludovicus Belding, dec'd, under a pre-emption, and your petitioner further shows that the said heirs of L. Belding, dec'd, have instituted an action of ejectment against your petitioner, in the Hot Spring Circuit Court, for said land, and judgment having been rendered against them, they appealed to the Supreme Court, where said suit is now pending.

Your petitioner would further show that if the said judgment should be reversed, and said case remanded to the Circuit Court and tried anew, he may need the testimony of several witnesses who are now growing old, and may die before their depositions can be taken legally in said case.

And your petitioner further shows that he believes and expects that he will be made a party to a chancery suit hereafter to be brought among said parties, in said Circuit Court, to settle the right to said land, and in which suit the validity of said pre-emption right of the said John Percifull, dec'd, under the act of Congress of 1814, will be impeached and involved, and your petitioner believes that the testimony of Adam Stroud, Thomas Woodward, and James Neal will be necessary and vitally important to his right on the trial of said cause; and he therefore prays your honor to grant him a commission, according to the statutes in such cases made and provided, to take and perpetuate their testimony in relation to said pre-emption.

By said Adam Stroud your petitioner believes he will be able to prove that the said John Percifull did inhabit and cultivate said quarter section of land for several years prior to the 12th April, 1814, and was in possession thereof at the passage of said pre-emption act, and that he never did remove from the Territory of Arkansas after his first settlement therein, which was prior to the year 1810.

By said James Neal your petitioner believes he will be able to prove that he, the said James Neal, resided in the vicinity of the said Hot Springs since the year 1812, and that he knows that said Percifull did inhabit and cultivate said quarter section of land now embracing said Hot Springs several years prior to the 12th of April, 1814, and never did remove from the said Territory of Arkansas.

By said Thomas Woodward your petitioner believes he will be able to prove that he visited said Hot Springs in the year 1816, and that he, the said John Percifull then occupied and lived on said tract of land, and that he boarded with him several weeks.

The said Stroud lives on the military road in Clark County, in this State, and the said Neal in Hot Spring County, and the said Woodward in Washita County, all in this State.

Your petitioner prays your honor to have commissions issued to

take said deposition according to law, that they may be used by him in the trial of any case involving the title to said Springs and land, and particularly the pre-emption right of the said John Percifull, deceased, thereto, as aforesaid.

JOHN C. HALE,
By ENGLISH & TRAPNALL, & TRAPNALL.

HOT SPRINGS COUNTY.

I, John C. Hale, the petitioner aforesaid, do state that the facts set forth in the said petition are true to the best of my knowledge and belief. (Signed) JOHN C. HALE.

Subscribed and sworn to by said Hale before me this 15th day of January, A. D. 1853. L. RUNYAN, *J. P.*

HOT SPRING COUNTY.

I, John C. Hale, the petitioner aforesaid, do state that the facts set forth in said petition is true to the best of my knowledge and belief. JOHN C. HALE.

Subscribed and sworn to by said J. C. Hale before me on the 5th of March, 1853. PHINEAS BARNES, *J. P.*

On examination of the foregoing petition of John C. Hale, I, as judge of the Hot Spring Circuit Court, do hereby grant the commissions therein prayed for, and the clerk of said Circuit Court is hereby required to issue commissions to any judge of any Court of record, or to any two justices of the peace in the county of Clark, requiring such judge or justices to take the depositions of Adam Stroud, and that he also issue a commission to any judge of a court of record, or to any two justices of the peace of the county of Washita, requiring such judge or justices to take the deposition of Thomas Woodward, and that he issue also a commission to any judge of a court of record, or to any two justices of the peace in Hot Spring County, requiring such judge or justices to take the depositions of James Neal, the said John C. Hale first giving to every person who may be known to be interested in the premises, his attorney, or agent, at least twenty days' notice of the times and places of taking said deposition respectively, and also delivering with every said notice a copy of the within and foregoing petition, and the clerk of said Circuit Court is hereby further required, immediately on the return of said depositions to his office, in his ex-officio capacity of recorder, to record them, and the papers and documents connected therewith, as required by law.

J. C. MURRAY,
Judge of the Hot Spring Circuit Court of Arkansas.

John C. Hale, *ex-parte:* Petition to perpetuate testimony. Filed July 25, 1853.

To Henry M. Rector, or Ebenezer Cummins, Esq., his attorney; William H. Gaines and wife, Maria Gaines, formerly Maria Belding,

Albert Belding, Henry Belding, and George Belding, heirs-at-law of Ludovicus Belding, or James M. Curran their attorney; take notice, that pursuance of an order of Hon. John C. Murray, Judge of the Hot Springs Circuit Court for commissions to perpetuate testimony, &c., and in conformity with a commission issued thereunder, a copy of which order and petition in which it was made being hereto attached, I shall proceed on the 21st day of October, 1853, between the hours of 8 o'clock A. M., and 5 o'clock P. M. of said, at the residence of Adam Stroud in the County of Clark, in the State of Arkansas, on the military road, to take the depositions of the said Adam Stroud, touching his knowledge of the matters and things set forth in said petition hereto annexed, to be read in evidence in the suits or controversies referred to in said petition (conditionally), when and where you may attend if you think proper. And the taking of the deposition under the notice, if not completed on said day, will be continued over from day to day thereafter, at the same place and between the same hours until concluded.

Given this 3d September, 1853. JOHN C. HALE.
By E. H. ENGLISH, *Att'y.*

Served the within notice on Henry M. Rector in Saline County, September the 6th, 1853, by handing him a true copy thereof, with a true copy of the petition and order therein referred to and hereto attached.

Sheriff's Fees.

Serving notice	50
Copy	1 00
Mileage	60
	$2 10

Served the within notice on W. H. Gaines and wife, Maria Gaines, Albert Belding, Henry Belding, and George Belding, heirs-at-law of Ludovicus Belding, deceased, by handing to James M. Curran, their attorney and agent, a true copy of the within notice, together with a true copy of the petition and order therein referred to and hereto attached. Done in Pulaski County, Arkansas, September 6th, A. D. 1853.

JOHN C. PEAY,
Sheriff of Pulaski County.
H. BROGAN,
Deputy Sheriff.

To the Hon. John C. Murray, Judge of the Hot Springs Circuit Court, of the State of Arkansas.

Your petitioner, John C. Hale, would respectively show unto your honor, that he is one of the claimants of the southwest quarter of section thirty-three, in township two, south of range nineteen west, in the county of Hot Springs, upon which the Hot Springs are situated, under and by virtue of the pre-emption of John C. Percifull, deceased,

which quarter section is also claimed by Henry M. Rector, under a New Madrid location, and by William H. Gaines and wife, and the other heirs of Ludovicus Belding, dec'd, under a pre-emption, and your petitioner further shows that the said heirs of L. Belding, dec'd, have instituted an action of ejectment against your petitioner in the Hot Spring Circuit Court for said land, and judgment having been rendered against them, they appealed to the Supreme Court, where said suit is now pending.

Your petitioner further shows that if the said judgment should be reversed, and said case remanded to the Circuit Court and tried anew, he may need the testimony of several witnesses who are now growing old, and may die before their depositions can be taken legally in said case, and your petitioner further shows that he believes and expects that he will be made a party to a chancery suit hereafter to be brought among said parties in said Circuit Court, to settle the right to said land, and in which suit the validity of said pre-emption right of the said John Percifull, dec'd, under the act of Congress of 1814, will be impeached and involved, and your petitioner believes that the testimony of Adam Stroud, Thomas Woodward, and James Neal will be necessary, and vitally important to his right in the trial of said cause, and he therefore prays your Honor to grant him a commission according to the statute in such case made and provided, to take and perpetuate their testimony in relation to said pre-emption.

By said Adam Stroud, your petitioner believes he will be able to prove that *that* the said John Percifull did inhabit and cultivate said quarter section of land for several years prior to the 12th of April, 1844, and was in possession thereof at the passage of said pre-emption act, and that he never did remove from the Territory of Arkansas after his first settlement thereof, which was prior to the year 1810.

By said James Neal, your petitioner believes he will be able to prove that the said Neal resided in the vicinity of the said Hot Springs since the year 1812, and that he knows that said Percifull did inhabit and cultivate said quarter section of land, now embracing said Hot Springs, several years prior to the 12th April, 1814, and never did remove from said Territory of Arkansas.

By said Thomas Woodward, your petitioner believes he will be able to prove that he visited said Hot Springs in the year 1816, and that the said John Percifull then occupied and lived on said tract of land, and he boarded with him several weeks.

The said Stroud lives on the military road in Clark County in this State, and the said Neal in Hot Spring County, and the said Woodward, in Camden, Washita County, all in this State.

Your petitioner prays your honor to have commissions issued to take said depositions according to law, that they may be used by him in the trial of any case involving the title of said Springs and

land, and particularly the pre-emption right of John Percifull, dec'd, therefore as aforesaid.

JOHN C. HALE,
By ENGLISH & TRAPNALL & TRAPNALL.

HOT SPRING COUNTY.

I, John C. Hale, the petitioner aforesaid, do state that the facts set forth in the said petition are true to the best of my knowledge and belief. (Signed) JOHN C. HALE.

Subscribed and sworn to by said Hale, before me, this 15th day of January, 1853. LAWSON RUNYAN, *J. P.*

HOT SPRING COUNTY.

I, John C. Hale, the petitioner aforesaid, state the facts set forth in said petition is true to the best of my knowledge and belief.

J. C. HALE.

Subscribed and sworn to by the said J. C. Hale, before me, on 5th of March, 1853. PHINEAS BARNES, *J. P.*

On examination of the foregoing petition of John C. Hale, I, as Judge of the Hot Spring Circuit Court, do hereby grant the commission therein prayed for, and the Clerk of said Circuit Court is hereby required to issue a commission to any judge of any court of record, or to any two justices of the peace in the county of Clark, requiring such judge or justices to take the deposition of Adam Stroud: and that he also issue a commission to any judge of any court of record, or to any two justices of the peace of the county of Washita, requiring such judge or justices to take the depositions of Thomas Woodward; and the he issue also a commission to any judge of a court of record, or to any two justices of the peace in Hot Springs County, require such judge or justices to take the depositions of James Neal; the said John C. Hale first giving to every person who may be known to be interested in the premises, his attorney or agent, at least twenty days' notice of the times and places of taking said deposition respectively, and also delivering with every such notice a copy of the within and foregoing petition. And the clerk of said Circuit Court is hereby further required immediately on the return of said deposition to his office, in his ex-officio capacity of record, to record them and the papers and document connected therewith, as required by law.

JOHN C. MURRAY,
Judge of the Hot Spring Circuit Court of Arkansas.

STATE OF ARKANSAS,
County of Hot Springs, ss.

The State of Arkansas, to any judge of any court of record, or to any two justices of the peace in the county of Clark, in the State of Arkansas, greeting:—

Know ye, that the Hon. John C. Murray, Judge of our Hot

Springs Circuit Court, having, upon the petition of John C. Hale, granted an order for the said Hale to take and perpetuate the testimony of Adam Stroud, of your county, touching his knowledge of the matters in controversy, or which may hereafter be in controversy between said Hale and others in reference to the title to the tract of land upon which the Hot Springs are situated.

Know ye, that reposing confidence in your prudence and fidelity, do by these presents grant unto you authority, diligently to examine said witness touching his knowledge of the matters aforesaid.

Therefore, do we desire you at such time and place as shall be named to you for that purpose, you cause the said witness to come before you, that you then and there examine him upon his corporal oath first taken before you, that you reduce his examination to writing, and when you shall have so taken them, that you send the same with this commission closed under your seal to us at Rockport, in Arkansas, without delay.

Witness, John P. Emerson, Clerk of said Circuit Court of Hot Springs County, and the seal of said court at office, this 25th day of July, A. D. 1853.

[L. S.] JOHN P. EMERSON, *Clerk.*

Depositions of witnesses taken *taken* and subscribed before me, Laurance G. Evans, Judge of the Court of Probate in and for the County of Clark (the same being a court of record), in the State of Arkansas, duly commissioned as such on this twenty-first day of October, A. D. 1853, between the hours of eight o'clock A. M. and six o'clock P. M., of said day, at the residence of Adam Stroud, in the County of Clark, the State of Arkansas, on the military road, in pursuance of a commission hereto annexed, and to be read as evidence in any suit, action, or controversy which may or shall arise, touching the validity or merits of a pre-emption claim of John Percifull, deceased, to the southwest quarter of section thirty-three, in township two, south of the base line, range nineteen, west of the fifth principal meridian, the same being the land on which the celebrated Hot Springs of Arkansas are situated; said testimony being taken in pursuance and by authority of a petition to, and order of the Judge of Hot Spring Circuit Court, which is hereto annexed and made a part hereof.

Adam Stroud, to me well known as the person described in said petition, order, and commission, being at said time and place produced, and being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth in regard to said pre-emption, did then and there, upon his oath aforesaid, depose as follows, to wit:—

I was acquainted with John Percifull in the year 1811. I was at the Hot Springs in 1811, 1812, 1813, and 1814, and saw John Percifull there. And there, about 40 yards above the creek in the rock, and the same distance below the big spring, there was one or two huts or small houses in which he lived, and was recognized as the head and proprietor of the premises. He took in everybody

that called upon him. He had in cultivation a small field or patch on the east side of the creek at the head of the valley, and running down the creek to the edge of the mountain, of which the hot water comes; the fence running up and down the creek ran close to the rock bath, but I cannot say whether the rock bath was inside of the field or not.

A number of years afterwards he moved to Red River, and stayed there a short time, and then returned to the Springs. I am pretty confident that he never left what is now the State of Arkansas after he first settled at the Springs. The Springs, before 1814, were called Percifull's Springs, and no person else was supposed to have any claim, and his claim was supposed to be a settlement right alone. The springs alluded to above are what is known as the Hot Springs of Arkansas.

The deponent further saith not. A. STROUD.

STATE OF ARKANSAS,
County of Clark.

I, Lawrence G. Evans, Judge of the Probate Court in and for the county of Clark, in the State of Arkansas, do hereby certify and make known that the foregoing depositions of Adam Stroud was taken before me on the 21st day of October, A. D. 1853, between the hours and at the place in the caption hereof above mentioned; that the examination, responses, and statements of said witness were reduced to writing by me, and by the said deponent sworn to and subscribed in my presence, at the time and place aforesaid; and that said deponent is a resident of the county of Clark, in the State of Arkansas. In testimony whereof, I, Lawrence G. Evans, Judge as aforesaid, do hereunto set my hand, at Clark County, in the State of Arkansas, this 21st day of October, A. D. 1853.

L. G. EVANS, [SEAL.]
Judge of Clark Probate Court.

STATE OF ARKANSAS,
County of Hot Springs.

I, John P. Emerson, Clerk of the Circuit and *ex-officio* recorder in and for the county of Hot Springs, and State of Arkansas, do hereby certify that the annexed and foregoing depositions was filed in my office on this 1st day of November, 1853, and that the same, with all the accompanying papers and documents, to wit, the notice to Henry M. Rector and the heirs of Ludovicus Belding, deceased; petition of John C. Hale for order and commission, and &c.; order of the Hon. J. C. Murray, Judge of the Hot Springs Circuit Court; and the commission to take the aforesaid deposition, were duly recorded on this day, in record book of deeds marked D, on page 311 to page 317.

In testimony whereof, I have hereunto set my hand and seal as such clerk, and affixed the seal of said Court, at office, on this 1st day of November, A. D. 1853. JOHN P. EMERSON,
Clerk and ex-officio Recorder.

John C. Hale, *ex parte*—Petition to perpetuate testimony.

John C. Hale, *ex parte*—Petition to perpetuate testimony; commission, and &c., to Clark County. ADAM STROUD.

21st Oct., 1853. A. STROUD.

The execution of writ on the reverse side of this paper appears by the schedule hereto annexed. L. G. EVANS,
Judge of the Probate Court.

JOHN C. HALE—*Ex parte.*

Deposition of Adam Stroud, filed in my office on the 1st day of November, 1853. JNO. P. EMERSON, *Clerk.*

To Henry M. Rector, or Ebenezer Cummins, Esq., his attorney, William H. Gaines and his wife, Maria Gaines, formerly Maria Belding, Albert Belding, Henry Belding, and George Belding, heirs-at-law of Ludovicus Belding, dec'd, or James M. Curran, their attorney.

Take notice that, in pursuance of an order of the Honorable John C. Murray, Judge of the Hot Spring Circuit Court, for commissions to perpetuate testimony, and in conformity with a commission issued thereunder, a copy of which order and petition upon which it was made being hereto attached, I shall proceed, on the 14th day of October, 1853, between the hours of 8 o'clock A. M. and 6 o'clock P. M. of said day, at the court house in the city of Camden, in the county of Ouachita, in the State of Arkansas, to take the deposition of Thomas Woodward, touching his knowledge of the matters and things set forth in said petition hereto annexed, to be read in evidence in the suits or controversies referred to in said petition (conditionally), when and where you may attend, if you think proper, and the taking the deposition under the notice, if not completed on said day, will be continued over from day to day thereafter at the same place, and between the same hours, until concluded. Given this 3d day of September, 1853. JOHN C. HALE,
By E. H. ENGLISH, *Att'y.*

Served the within notice on Henry M. Rector, in Saline County, September 6th, 1853, by handing him a true copy thereof, together with a true copy of the petition and order therein referred and hereto attached. WM. A CRAWFORD,
Sheriff of Saline County.

Sheriff fees—

Serving notice	50
Copying	1 00
Mileage	60
	$2 10

Served the within notice on W. H. Gaines and wife, Maria Gaines, Albert Belding, Henry Belding, and George Belding, heirs-at-law

of Ludovicus Belding, dec'd, by handing to James M. Curran, their attorney and agent, a true copy of the within notice, together with a true copy of the petition and order therein referred to and hereto attached. Done in Pulaski County, Arks., September 6th, A. D. 1853.

JOHN C. PEAY,
Sheriff of Pulaski County, Arks.
By HUGH BROGAN, *Dept. She'ff.*

Sheriff's fees—50
1 00
1 50

To the Hon. John C. Murray, Judge of the Hot Springs Circuit Court of State of Arkansas :—

Your petitioner, John C. Hale, would respectfully show unto your honor that he is one of the claimants of the southwest quarter of section thirty-three, in township two, south of range nineteen west, in the county of Hot Springs, upon which the Hot Springs are situated, under and by the pre-emption of John Percifull, deceased, which quarter section is also claimed by Henry M. Rector, under a New Madrid location, and by Wm. H. Gaines and wife, Maria Gaines, and the other heirs of Ludovicus Belding, deceased, under a pre-emption; and your petitioner further shows the said heirs of Ludovicus Belding, deceased, have instituted an action of ejectment against your petitioner in the Hot Spring Circuit Court for said land; and judgment having been rendered against them, they appealed to the Supreme Court, where said suit is now pending.

Your petitioner would further show, that if the said judgment should be reversed, and said case remanded to the Circuit Court, and tried anew, he may need the testimony of several witnesses who are now growing old, and may die before their deposition can be taken legally in said case.

And your petitioner further shows that he believes and expects that he will be made a party to a chancery suit hereafter to be brought among said parties in said Circuit Court, to settle the right to said lands, and in which suit the validity of the said pre-emption right of the said John Percifull, deceased, under the act of Congress of 1814, will be impeached and involved; and your petitioner believes that the testimony of Adam Stroud, Thomas Woodward, and James Neal, will be necessary and vitally important to his right in the trial of said cause, and he therefore prays your honor to grant him a commission according to the statute in such case made and provided to take and perpetuate their testimony in relation to said pre-emption.

By said Adam Stroud, your petitioner believes he will be able to prove that the said John Percifull did inhabit and cultivate said quarter section of land for several years prior to the 12th of April, 1814, and was in possession thereof at the passage of said pre-emption act, and that he never did remove from the territory of Arkansas after his first settlement therein, which was prior to the year 1810.

By said James Neal, your petitioner believes he will be able to prove that he, the said Neal, resided in the vicinity of the Hot Springs since the year 1812, and that he knows said John Percifull did inhabit and cultivate said quarter section of land, now embracing said Hot Springs, several years prior to the 12th of April, 1814, and never did remove from the said territory of Arkansas. By said Thomas Woodward, your petitioner believes he will be able to prove that he visited said Hot Springs in the year 1816, and that he, the said John Percifull, then occupied and lived on said tract of land, and that he boarded with him several weeks.

The said Stroud lives on the military road in Clark County, in this State, and the said Neal in Hot Spring County, and the said Woodward in Camden, Washita County, all in this State.

Your petitioner prays your Honor to have commissions issued to take said depositions according to law, that they may be used by him in the trial of any case involving the title to said Springs and land, and particularly to the pre-emption right of said John Percifull, deceased, thereto as aforesaid.

JOHN C. HALE,
ENGLISH, & TRAPNALL & TRAPNALL.

HOT SPRING COUNTY.

I, John C. Hale, the petitioner aforesaid, do state that the facts set forth in the said petition are true, to the best of my knowledge and belief. (Signed), J. C. HALE.

Subscribed and sworn to by said Hale before me the 15th day of January, A. D. 1853. LAWSON RUNYAN, *J. P.*

HOT SPRING COUNTY.

I, John C. Hale, the petitioner aforesaid, state that the facts set forth in said petition are true, to the best of knowledge and belief.

J. C. HALE.

Subscribed and sworn to by said Hale before me on the 5th of March, 1853. PHINEAS BARNS, *J. P.*

On examination of the foregoing petition of John C. Hale, I, as Judge of the Hot Spring Circuit Court, do hereby grant the commission therein prayed for, and the Clerk of said Circuit Court is hereby required to issue a commission to any judge of any court of record, or to any two justices of the peace in the County of Clark, requiring such judge or justices to take the depositions of Adam Stroud; and that he also issue a commission to any judge of any court of record, or to any two justices of the peace of the County of Washita, requiring such judge or justices to take the depositions of Thomas Woodward, and that he issue also a commission to any judge of a court of record, or to any two justices of the peace in Hot Spring County, requiring such judge or justices to take the deposition of James Neal, the said John C. Hale first giving to every person who may be known to be interested in the premises, his attorney or agent,

at least twenty days' notice of the times and place of taking said deposition respectively, and also delivering with every such notice a copy of the within and foregoing petition; and the clerk of said Circuit Court is hereby further required, immediately on the return of said deposition to his office, in his *ex-officio* capacity of Recorder, to record them, and the papers and documents connected therewith, as required by law. J. C. MURRAY,

Judge of Hot Springs Circuit Court of Arkansas.

STATE OF ARKANSAS,
County of Hot Springs.

The State of Arkansas to any judge of any court of record, or to any two justices of the peace, in the county of Washita, in the State of Arkansas, greeting:—

Know ye, that the Honorable John C. Murray, Judge of our Hot Spring Circuit Court, having, on the petition of John C. Hale, granted and order for the said Hale to take and perpetuate the testimony of Thomas Woodward, of your county, touching his knowledge of the matters in controversy, or which may hereafter be in controversy, between said Hale and others, in reference to the title to the tract of land upon which the Hot Springs are situated, &c.

Know ye that we, reposing confidence in your prudence and fidelity, do by these presents give unto you authority diligently to examine said witness touching his knowledge of the matters aforesaid.

Therefore we desire you, at such time and place as shall be named to you for that purpose, you cause the said witness to come before you, that you then and there examine him upon his corporal oath first taken before you, that you reduce his examination to writing, and when you shall so have taken, that you send the same, with this commission, closed up under your seal, to us, at Rockport, Arkansas, without delay.

Witness Jno. P. Emerson, Clerk of said Circuit Court of Hot Springs County, at office, this 25th day of July, 1853.

JOHN P. EMERSON, *Clerk.*

CAMDEN, ARKANSAS, *Oct.*, 1853.
October 14th, 1853.

Court of Ecore, Fabre Township, Ouachita County, met for the purpose of taking the depositions of Thomas Woodward, in the case of John C. Hale and others, for the perpetuating the testimony of said Thomas Woodward by virtue of a commission from the Hon. John C. Murray, Judge of the Hot Spring Circuit Court.

The said Thomas Woodward not appearing on said day, said court was adjourned to meet Saturday, October 15th, 1853, at 10 o'clock A. M.

Saturday, Oct. 15th, 1853.

Court met pursuant to adjournment, said witness, Thomas Woodward, failing to appear, said Court adjourned to meet Monday, 17th October, at 10 A. M.

Monday, Oct. 17th, 1853.

Court met pursuant to adjournment, when said witness appeared, and I proceeded to take the deposition of said witness after being duly sworn.

Depositions of witness taken and subscribed before me, E. H. Whitfield, an acting justice of the peace for the county of Ouachita, in the State of Arkansas, duly commissioned as such on the 17th day of October, A. D. 1853, between the hours of 8 o'clock A. M., and 6 o'clock P. M., of said day, at the court house in this city of Camden, in the county of Ouachita, in the State of Arkansas, in pursuance of a commission hereto annexed to perpetuate the testimony of Thomas Woodward, to be read in evidence in the suits in controversy set forth in the petition hereto annexed wherein the heirs of L. Belding, deceased, and J. C. Hale and others, defendant, on the part of said J. C. Hale. Thomas Woodward, a witness known to me to be of lawful age, being to me at the time and place aforesaid produced, and being by me duly sworn to testify the truth, the whole truth, and nothing but the truth, in regard to the matters in controversy in the suits aforesaid, did then and there, on his oath aforesaid, depose as follows, to wit: Thomas Woodward testifies as follows:—

That I was at the Hot Springs in the month of May, and left in the month of June after remaining some 20 days, in the year 1816; during the time that I stayed at the Springs, I boarded with one John Percifull and his wife Sarah; that they resided in log houses, and had some enclosures, and among them a garden which was cultivated in vegetables, and a lot for horses. He had at the time, living with him a man by the name of Thomas Holman, and Percifull told me that he came there in 1807, and had been living there from that time until then, and Holman informed me that he had been living with him several years.

There was at that time divers white persons and Indians camped about the Springs, but none appeared to exercise any authority except Percifull. The others appeared to have come there for the benefit of the water, and matters of curiosity.

I again visited the Hot Springs in 1841, and found Mrs. Percifull still living there with one John C. Hale, that is, she was living there a portion of her time, and she had her son. David Percifull informed me they had sold one-half their interest in the Springs to John C. Hale and a man by the name of Wood.

I have seen since a plat certified by the surveyor-general. I find that the settlement and cultivation aforesaid of the said Percifull is situated on the southwest quarter of section 33, of township 2, south of range 19 west, and to the best of my recollection there was no other house or houses on said premises but what was claimed by said Percifull. I recollect to have become acquainted with a man by the name of Winthrop Colbreath, who then lived near the Caddo, but was at the Springs when I was there in 1816; also a man by the

name of Neal, who I think now lives in Caddo Cove; both I have seen at the Springs since I became a citizen of Arkansas in 1842.

In the year 1850, when I gave my first deposition, Neal was then at the Springs, and his recollection and mine with regard to Percifull being the only claimant in 1816 were the same, for we talked the matter over.

I have frequently visited the Springs since I became a citizen of Arkansas, and have always found John C. Hale in possession of the property which I understood belonged to Mrs. Percifull in 1841, though there had, for the last five years, been some alteration made by pulling down houses and putting others in their stead.

Oct. 17, 1853. THOS. WOODWARD.

STATE OF ARKANSAS,
County of Ouachita.

I, E. H. Whitfield, an acting and duly commissioned Justice of the Peace in and for the County of Ouachita, in the State of Arkansas, do hereby certify and make known that the foregoing deposition of Thomas Woodward was taken before me on the seventh (17) day of October, A. D. 1853, between the hours and at the place in the caption hereof above mentioned, that the statement of said deponent was reduced to writing in my presence, and by the said deponent sworn to and subscribed in my presence at the time and place aforesaid, and that said deponent is a resident of the County of Ouachita and State of Arkansas.

In testimony whereof I, E. H. Whitfield, Justice of the Peace, do hereunto set my hand at Camden, in the State of Arkansas, this 17th day of October, A. D. 1853.

E. H. WHITFIELD, *J. P.*

STATE OF ARKANSAS,
County of Hot Springs.

I, John P. Emerson, Clerk of the Circuit Court, and *ex-officio* recorder in the County of Hot Springs, State aforesaid, do hereby certify that the annexed and foregoing deposition, with all the accompanying papers and documents, to wit: copy of the petition of John C. Hale to John C. Murray, Judge of the Circuit Court of said county; notice to Henry M. Rector and the heirs of Ludovicus Belding, dec'd; order of the judge for commission to issue, &c., and commissions were filed in my office on the 1st day of November, 1853, and is now duly recorded in record book of deeds marked D, from page 303 to page 310, inclusive.

In testimony whereof I, John P. Emerson, Clerk of the Circuit Court of said county, have set my hand and affixed the seal of said court thereto at office, this 1st day of November, 1853.

[L. S.] JNO. P. EMERSON, *Clerk.*

To the honorable John C. Murray, Judge of the Hot Spring Circuit Court, of the State of Arkansas.

Your petitioner, John C. Hale, would respectfully show unto your

honor, that he is one of the claimants of the southwest quarter of the section thirty-three, in township two, south of range nineteen west, in the County of Hot Springs, upon which the Hot Springs are situated, under and by virtue of a pre-emption of John Percifull, deceased, which quarter section is also claimed by Henry M. Rector under a New Madrid location, and by W. H. Gaines and wife, Maria Gaines, and the other heirs of Ludovicus Belding, deceased, under a pre-emption; and your petitioner further shows, that the said heirs of Belding, deceased, have instituted an action of ejectment against your petitioner, in the Hot Spring Circuit Court for said land, and judgment having been rendered against them, they appealed to the Supreme Court, where said suit is now pending.

Your petitioner would further show, that if said judgment should be reversed, and case remanded to the Circuit Court and tried anew, he may need the testimony of several witnesses who are now growing old, and may die before their depositions can be taken legally in said case.

And your petitioner further shows, that he believes and expects that he will be made a party to a chancery suit hereafter to be brought among said parties in said Circuit Court, to settle the right to said land, and in which suit the validity of said pre-emption right of the said John Percifull, deceased, under the act of Congress of 1814, will be impeached, and involved; and your petitioner believes that the testimony of Adam Stroud, Thomas Woodward, and James Neal, will be necessary and vitally important to his right in the trial of said cause, and he therefore prays your honor to grant him a commission according to the statutes in such cases made and provided, to take and perpetuate their testimony in relation to said pre-emption.

By said Adam Stroud, your petitioner believes he will be able to prove that the said John Percifull did inhabit and cultivate said quarter section of land for several years prior to the 12th of April, 1814, and was in possession thereof at the passage of said pre-emption act, and that he never did remove from the Territory of Arkansas after his first settlement therein, which was prior to the 1810.

By said James Neal, your petitioner believes he will be able to prove that he, the said Neal, resided in the vicinity of the said Hot Springs, since the year 1812, and that he knows that said Percifull did inhabit and cultivate said quarter section of land now embracing said Hot Springs, several years prior to the twelfth of April, 1814, and never did remove from the Territory of Arkansas.

By said Thomas Woodward, your petitioner believes he will be able to prove he visited said Hot Springs in the year 1816, and the said John Percifull then occupied and lived on said tract land, and that he boarded with him several weeks. The said Stroud lives in Clark County on the military road, in this State; and the said

Neal in Hot Springs County, and the said Woodward in Camden Ouachita County, all in this state.

Your petitioner prays your honor to have commissions issued to take said depositions according to law, that they may be used by him in the trial of any case involving the title to said Springs and land, and particularly the pre-emption right of said John Perciful, deceased, thereto as aforesaid. J. C. HALE,

By ENGLISH and TRAPNALL & TRAPNALL.

HOT SPRING COUNTY.

I, John C. Hale, the petitioner aforesaid, do state that the facts set forth in the said petition are true to the best of my knowledge and belief. (Signed) J. C. HALE.

Subscribed and sworn to by said Hale, before me this 15th day of January, 1853. LAWSON RUNYAN, *J. P.*

HOT SPRING COUNTY.

I, John C. Hale, the petitioner aforesaid, state that the facts set forth in said petition is true to the best of my knowledge and belief.

J. C. HALE.

Subscribed and sworn to by the said J. C. Hale, before me, on 5th of March, 1853. PHINEAS BARNS, *J. P.*

On examination of the foregoing petition of John C. Hale, I, as Judge of the Hot Spring Circuit Court, do hereby grant the commission therein prayed for, and the Clerk of said Circuit Court is hereby required to issue a commission to any judge of any court of record, or to any two justices of the peace in the county of Clark, requiring such judge or justices to take the deposition of Adam Stroud. And that he also issue a commission to any judge of a court of record, or to any two justices of the peace of the county of Washita, requiring such judge or justices to take the deposition of Thomas Woodward. And that he issue also a commission to any judge of a court of record, or to any two justices of the peace of the County of Hot Springs, requiring such judge or justices to take the deposition of James Neal. The said John C. Hale first giving to every person who may be known to be interested in the premises, his attorney or agent, at least twenty days' notice of the time and place of taking said depositions respectively. And also deliver with every such notice a copy of the within and foregoing petition, and the Clerk of said Circuit Court is hereby further required immediately on the return of said depositions to his office in his *ex-officio* capacity of recorder, to record them, and the papers and documents connected therewith, as required by law. J. C. MURRAY,

Judge of the Hot Spring Circuit Court, Arkansas.

To Henry M. Rector, or Ebenezer Cummins, Esq., his attorney, William H. Gaines and his wife, Maria Gaines, formerly Maria Belding, Albert Belding, Henry Belding, and George Belding, heirs-at-law of Ludovicus Belding, deceased, or their attorney, James M. Curran:

Take notice, that in pursuance of an order of the Hon. John C. Murray, Judge of the Hot Springs Circuit Court, for commissions to perpetuate testimony, &c., and in conformity with a commission issued thereunder, a copy of which order and petition, on which it was issued, being hereunto attached, I shall proceed on the seventh day of October, 1853, between the hours of 8 o'clock A. M. and 6 o'clock P. M. of said day, at the office of John C. Hale (Justice of the Peace), in Hot Springs Valley, in Hot Springs County, State of Arkansas, to take the depositions of James Neal touching his knowledge of the matters and things set forth in said petition hereto annexed, to be read in evidence in the suit in controversy, referred to in said petition (conditionally), when and where *and where* you may attend if you think proper; and the taking of said depositions under this notice, if not completed on said day, to be continued over from day to day at the same place, and between the same hours, until concluded.

Given this 3d Sept., 1853.

J. E. HALE,
By E. H. ENGLISH, *A'tty.*

Served the within on Henry M. Rector, in Saline County, Sept. 6th, 1853, by handing him a true copy thereof, together with a true copy of the petition and order therein referred to and hereto attached.

WM. A. CRAWFORD,
Sheriff of Saline County, Arks.

Mileage,	60
Serving notice,	50
Copy,	1 00
Sheriff's fees,	$2 10

Served the within notice on William H. Gaines and wife, Maria Gaines, Albert Belding, Henry Belding, and George Belding, deceased, by handing to James M. Curran, their attorney and agent, a true copy of the within notice, together with a copy of the petition and order therein referred to and hereto attached. Done in Pulaski County, Arkansas, Sept. the 6th, 1853.

JOHN C. PEAY,
Sheriff Pulaski County, Arks.
By HUGH BROGAN,
Deputy Sheriff.

Sheriff's fee—50.

To the Hon. John C. Murray, Judge of the Hot Spring Circuit Court of the State of Arkansas:

Your petitioner, John C. Hale, would respectfully show unto your honor, that he is one of the claimants of the southwest quarter of section thirty-three, in township two, south of range nineteen west, in the County of Hot Spring, upon which the Hot Springs are situated, under and by virtue of the pre-emption of John Percifull, deceased, which q'r section is also claimed by Henry M. Rector, under

a New Madrid location, and by Wm. H. Gaines and wife, and the other heirs of Ludovicus Belding, deceased, under a pre-emption; and your petitioner further shows that the said heirs of L. Belding, dec'd, have instituted an action of ejectment against your petitioner in the Hot Spring Circuit Court, and judgment having been rendered against them, they appealed to the Supreme Court, where said suit is now pending.

Your petitioner would further show that if the said judgment should be reversed, and said case remanded to the Circuit Court, and tried anew, he may need the testimony of several witnesses who are now growing old, and may die before their depositions can be taken legally in said case.

And your petitioner further shows that he believes and expects that he will be made a party to a chancery suit hereafter to be brought among said parties in said Circuit Court, to settle the right to said land, and in which suit the validity of said pre-emption right of the said John Percifull, dec'd, under the act of Congress of 1814, will be impeached and involved, and your petitioner believes that the testimony of Adam Stroud, Thomas Woodward, and James Neal will be necessary and vitally important to his right in the trial of said cause, and he therefore prays your honor to grant him a commission according to the statute in such cases made and provided, to take and perpetuate their testimony in relation to said pre-emption.

By Adam Stroud your petitioner believes he will be able to prove that the said John Percifull did inhabit and cultivate said quarter section of land for several years prior to the 12th of April, 1814, and was in possession thereof at the passage of said pre-emption act, and that he never did remove from the Territory of Arkansas after his first settlement thereon, which was prior to the year 1810.

By said James Neal your petitioner believes he will be able to prove that he, the said Neal, resided in the vicinity of the said Hot Springs since the 1812, and that he knows that said Percifull did inhabit and cultivate said quarter section of land now embracing said Hot Springs, several years prior to the 12th of April, 1814, and never did remove from said Territory of Arkansas.

By said Thomas Woodward your petitioner believes he will be able to prove that he visited the said Hot Springs in the year 1816, and the said John Percifull then occupied and lived on said tract of land, and that he boarded with him several weeks.

The said Stroud lives on the military road in Clark County in this State, and the said Neal in Hot Spring County, and the said Woodward in Camden, Ouachita County, all in this State.

Your petitioner prays your honor to have commissions issued to take said depositions according to law, that they may be used by him in the trial of any cause involving the title of said Springs and land, and particularly to the pre-emption of John Percifull, deceased, thereto, as aforesaid.

JOHN C. HALE.
By E. H. ENGLISH, and
TRAPNALL & TRAPNALL.

HOT SPRING C.

I, John C. Hale, the petitioner aforesaid, state that the facts set forth in said petition are true, to the best of my knowledge and belief. (Signed) J. C. HALE.

Subscribed and sworn to by said John C. Hale, before me, this 15th day of Jan'y, 1853. LAWSON RUNYAN, *J. P.*

HOT SPRING CO.

I, John C. Hale, the petitioner aforesaid, do state that the facts set forth in the said petition are true, to the best of my knowledge and belief. (Signed) J. C. HALE.

Subscribed and sworn to by the said J. C. Hale, before me, on the 3d of March, 1853. PHINEAS BARNS, *J. P.*

On examination of the foregoing petition of John C. Hale, I, as Judge of the Hot Spring Circuit Court, do hereby grant the commissions therein prayed for, and the clerk of said Circuit Court is hereby required to issue a commission to any judge of any court of record, or to any two justices of the peace in the county of Clark, requiring such judge or justices to take the depositions of Adam Stroud; and that he also issue a commission to any judge of any court of record, or to any two justices of the peace of the county of Washita, requiring such judge or justices to take depositions of Thomas Woodward; and that he issue also a commission to any judge or to any two justices of the peace of the Court of Hot Springs, to take the deposition of James Neal, the said John C. Hale first giving to every person who may be known to be interested in the premises at least twenty days' notice of the time and place of the taking said deposition respectively, and also delivering with every such notice a copy of the within and foregoing petition; and the clerk of said Circuit Court is hereby further required, immediately on the return of said depositions to his office, in his *ex-officio* capacity of recorder, to record them and the papers and documents connected therewith, as required by law. J. C. MURRAY,

Judge of the Hot Spring Circuit Court, Arkansas.

STATE OF ARKANSAS,
County of Hot Spring.

The State of Arkansas to any judge of any court of records, or to any two justices of the peace, in the county of Hot Spring, in the State of Arkansas, greeting:—

Know ye, that the Hon. John C. Murray, Judge of our Hot Spring Circuit Court, having, upon the petition of John C. Hale, granted an order for the said Hale to take and perpetuate the testimony of James Neal of your county, touching his knowledge of the matters in controversy, or which may hereafter be in controversy, between said Hale and others, in reference to the title to the tract of land upon which the Hot Springs are situated, &c.

Know ye, that, reposing confidence in your prudence and fidelity,

do by these presents give unto you authority diligently to examine said witness touching his knowledge of matters aforesaid.

Therefore we do desire you, at such time and place as shall be named for that purpose, you cause said witness to come before you, that you then and there examine him, upon his corporal oath, first taking before you, you reduce his examination to writing; and when you so shall have taken them, that you send the same, with this commission, closed up under your seal, to us, at Rockport, Arkansas, without delay.

Witness John P. Emerson, Clerk of said Circuit Court of Hot Spring County, and the seal of said Court, at office, this 25 day July, 1853.

[SEAL.] JOHN P. EMERSON, *Clerk.*

The execution of this commission appears by the schedule hereto annexed.

L. RUNYAN, *J. P.*
PHINEAS BURNS, *J. P.*

Deposition taken of a witness, and subscribed before us, acting Justices of the Peace for the County of Hot Spring, in the State of Arkansas, duly commissioned as such justices on the seventh day of October, A. D. eighteen hundred and fifty-three, between the hours of 8 o'clock A. M. and 6 o'clock P. M. of said day, at the office of John C. Hale, Justice of the Peace, in Hot Spring valley, in the town of Hot Spring, in the County of Hot Spring, in the State of Arkansas, in pursuance of a commission hereto annexed, for the purpose of taking and perpetuating the testimony of said witness, to be read in evidence in the suits or controversies conditionally, which may hereafter arise between John C. Hale and others in relation to the title to the tract of land upon which the Hot Springs are situated and particularly in

L. RUNION, *J. P.*
PHINEAS BARNS, *J. P.*

evidence in favor of the pre-emption right of John Percifull, deceased, thereto. James Neal, a witness known to me to be of lawful age, being to me at the time and place aforesaid produce, and being by — first duly sworn to testify the truth, and nothing but the truth, the whole truth, in relation to the right of pre-emption of John Percifull, dec'd, to the tract of land embracing the Hot Springs, in the County of Hot Springs, in the State of Arkansas, did then and there, on his oath, depose as follows, to wit:—

1st Question of John C. Hale. At what date did you first become acquainted with John Percifull, deceased, the claimant of a pre-emption right to the tract of land embracing the Hot Springs as aforesaid?

Answer. In the summer of eighteen hundred and twelve.

L. RUNION, *J. P.*
PHINEAS BARNS, *J. P.*

2d Question. Where did you become acquainted with him?

My first acquaintance with him was in Hot Spring valley, at that

time in the Territory of Arkansas, now known as the Hot Springs in the State of Arkansas.

3d Question. In what business was he engaged at said Hot Springs at the time of your first acquaintance with him?

Answer. Was at that time keeping a few boarders, and living at said Springs in a little log-cabin.

4th Question. Was there any more cabins or shanties claimed by him than that in which he was living?

Answer. Not that I recollect of; there was none claimed by any one else at that time, to my knowledge.

5th Question. Did you see any cultivation there in that year?

J. RUNYAN, *J. P.*
PHINEAS BARS, *J. P.*

Answers. None at all that I saw, with the exception of a small patch which was called Percifull's garden or *truck* patch, which was situated on the east side of the Hot Springs Creek, extending up towards the foot of the mountain, right above the upper main Hot Spring, as was called them days, and is called the upper these days.

6th Question. Do you recollect who called it Percifull's?

Answer. I don't recollect of any particular person, with the exception of Percifull himself.

7th Question. Was there anybody living with Percifull at that date?

Answer. There was a young man that I was acquainted with previous to that time, by the name of Thomas Haleman, that told

L. RUNYON, *J. P.*
PHINEAS BARS, *J. P.*

me at that time that he was living with Mr. John Percifull, and I saw him doing things about the cabin.

8th Question. How far was the residence or house Percifull inhabited at that time from the Hot Springs and garden, and the place where John C. Hale's house now stands?

Answer. I should suppose, according to my recollection, that it was between forty and sixty steps from the hot water, not very far from the centre of the main hot water, and, as near as I can guess, between two hundred and seventy-five yards to what was called his garden or truck patch, and about where John C. Hale's main building now stands.

9th Question. How long before you visited the Hot Springs again?

L. RUNYAN, *J. P.*
PHINEAS BARNS, *J. P.*

Answer. As well as I can recollect, it was some time in the fall; I was in the Hot Spring valley in the year eighteen hundred and fourteen.

10th Question. Who did you find living in the same house that Percifull was living in, in eighteen hundred and twelve?

Answer. Percifull was in the same building himself.

11th Question. Where have you principally lived since eighteen hundred and twelve?

Answer. My home has been within fifty to sixty miles of the Hot Springs Valley, in Arkansas.

12th Question. Do you ever know of Percifull having moved from said territory after your first acquaintance with him?

Answer. I know he never did remove from said territory.

L. RUNYAN, *J. P.*
PHINEAS BARNS, *J. P.*

13th Question. Upon what quarter section was the buildings, improvements, and cultivations of said Percifull situated?

Answer. They were on that quarter section embracing the Hot Springs, and partly covered by Rector's New Madrid Location, as I am informed.

14th Question. Where were you in January 20th, 1851, when the investigation between the parties claiming the Hot Springs was had before the register and receiver at Washington, Arkansas?

I was on a steamboat, on my way from Little Rock to New Orleans.

15th Question. Did you ever hear Percifull say he claimed the Hot Springs by virtue of his settlement right?

Ans. I did.

LAWSON RUNYAN, *J. P.*
PHINEAS BARNS, *J. P.*

16th Question. Did you ever hear any one else claim said Hot Springs by virtue of a settlement right previous to 1814?

Answer. I did not.

17th Question. What is your age?

Answer. Sixty-four years old July last; and further this deponent says not.

JAMES NEAL.

STATE OF ARKANSAS,
County of Hot Spring.

We, Lawson Runyan and Phineas Barns, acting and duly commissioned Justice of the Peace in and for the County of Hot Springs in the State of Arkansas, do hereby certify and make known that the foregoing depositions of James Neal was taken before us on the 7th day of October, A. D. 1853, between the hours and at the place in the caption heretofore above mentioned; that the examination, responses, and statements of the said deponent, was reduced to writing in our presence, and by said deponent sworn to and subscribed in our presence at the time and place aforesaid, and that the deponent is a resident of the County of Hot Springs and State of Arkansas.

In testimony whereof, we, Lawson Runyan and Phineas Barns, Justices of the Peace, do hereunto set our hands, at Hot Springs in the State of Arkansas, this 7th day of October, A. D. 1853.

L. RUNYAN, *J. P.*
PHINEAS BARNS, *J. P.*

STATE OF ARKANSAS,
County of Hot Springs.

I, John P. Emerson, clerk of the Circuit Court, and ex-officio recorder in and for the County of Hot Springs, and State aforesaid, do hereby certify that the foregoing depositions was filed in my office on this the 1st day of November, 1853, and is now duly recorded with all the accompanying papers, to wit: The petition of John C. Hale to the judge, the order of the judge, the notice to Henry M. Rector and the heirs of Ludovicus Belding, dec'd, with a copy of petition and order aforesaid, in record book of deeds marked D, from 291 to 302, inclusive.

In testimony whereof, I, John P. Emerson, clerk of the Circuit Court, and ex-officio recorder, have set my hand and affixed the seal of said Circuit Court, at office in Rockport, this 1st day of November, A. D. 1853. [L. S.] JNO. P. EMERSON,
Clerk and ex-officio Recorder.

And the defendant also proved that Thomas Woodward lived in the State of Louisiana, James Neal in the State of Texas, and Adam Stroud in the county of Clark, and had been subpœnaed to testify in this case, but is absent, to the admission of which the plaintiff at the time objected, and the Court sustained the objection; to which opinion, sustaining said objection and refusing to let said depositions be read, the defendant at the time excepted, and asked for time to prepare his bill of exceptions, which is granted him.

The defendant then proved that John Percifull was dead, dying before the first day of January, eighteen hundred and thirty-six, leaving a widow and only son and heir; and that said widow died before the 14th of January, 1848; that said widow was named Sarah Percifull, and son named David Percifull.

Whereupon the defendant offered in evidence the title bond of Sarah and David Percifull, with the attached certificate, which was in the words and figures following, to wit:—

Know all men by these presents, that we, John C. Hale and Milus H. Wood, are held and firmly bound unto Sarah Percifull and David Percifull in the sum of three thousand dollars, to which payment well and truly to be made we hereby bind ourselves, severally and jointly, our several and joint heirs, executors, and administrators, firmly by these presents.

In testimony whereof, we have hereunto set our hands and seals, this the 14th day of November, A. D. 1840.

JOHN C. HALE. [SEAL.]
MILUS H. WOOD. [SEAL.]

Attest, WARREN DUNHAM,
JOHN C. KEYKENDALL.

The condition of the above obligation is such, whereas the said above bound John C. Hale and Milus H. Wood have this purchased of the said Sarah and David Percifull certain improvements made by and

under the control of John Percifull, deceased, in part, and the residue by and under the control of the said Sarah and David Percifull, on the public lands of the United States designated, to wit: the west half of section thirty-three in township No. (2) two, south of range No. (19) nineteen, west of the fifth principal meridian, and subject to sale at Washington, Arkansas; together with possessions and improvements, and all the furniture thereunto in anywise appertaining. Also, one-half of all the lands, waters, and benefits, and privileges that may be acquired from or granted by the Government of the United States or that of the State of Arkansas in consideration of said improvements and settlements right unto them the said John C. Hale, Milus H. Wood, their heirs, assigns, in consideration of which, we, the said John C. Hale and Milus H. Wood, bind ourselves, heirs, executors, administrators and assigns, severally and jointly, to discharge the above bond, as follows, to wit: To pay or cause to be paid the sum of eighteen hundred and eighty dollars and four cents, the balance due in a judgment in favor of Messrs. Rayburn & Conway, and obtained against the said Sarah and David Percifull and Warren Dunham, at the February term of the Circuit Court in and for Hot Spring County, Arkansas, A. D. 1840, and the further sum of one hundred and fifty dollars on or before the 9th day of December, A. D. 1840; also, the residue of eleven hundred and sixty-nine dollars and ninety-six cents, on or before the first day of January, eighteen hundred and forty-three, the sum of two hundred dollars of is to be paid at sight, provided the land on which David Percifull now resides is offered for sale previous to the above stipulated time, for all of which we bind ourselves, our heirs, executors, administrators and assigns for the faithful discharge of the several sums at the time of payment to the said Sarah and David Percifull, their heirs, executors, administrators and assigns, and whenever the said John C. Hale and Milus H. Wood do pay or cause to be paid in manner and form as prescribed, the above obligation as null and void. But if default shall be made in the payment of either of the said sums on the days and times heretofore mentioned and appointed for payment thereof respect*fully*, then to be and remain in full force and virtue; and we, the said John C. Hale and Milus H. Wood, do firmly bind ourselves, our heirs, executors, administrators and assigns, severally and jointly, in the further sum of three thousand dollars, payable and conditioned as follows: that is, when the said Sarah and David Percifull make or cause to be made a deed in fee simple with a general warranty to one-half of the one hundred and sixty acres of land which they may acquire from the Government of the United States in consideration of settlement and pre-emption right on the west half of section thirty-three, in township No. (2) two, south of range nineteen (19) west, and embracing the Hot Springs by said settlement, the said half conveyed to the said John C. Hale and Milus H. Wood to be equal in value to the residue of said land, and when the said conveyance shall have been

made and confirmed unto the said John C. Hale and Milus H. Wood, their heirs, executors, administrators and assigns, are held and bound for the faithful payment of the above mentioned ten thousand dollars; but should the said Sarah and David Percifull be unable to make the legal conveyance, as above mentioned, by being prevented by other claims or by the General Government, then and in that case both parties are released, so far as the conveyance and the sum of ten thousand dollars, without damage to the other party; but should the Sarah and David Percifull, their heirs, executors, administrators and assigns obtain a patent from the General Land Office for the said land, refuse to make or cause to be made the deed as above specified, then and in that case the said Sarah and David Percifull as agree their heirs and assigns, are bound to pay unto the said John C. Hale and M. H. Wood, their heirs and assigns, the sum of fifty thousand dollars, as a consideration for their services and money expended in establishing said right of pre-emption. But if conveyed as above agreed, the fifty thousand dollars be null and void, and the said Sarah and David Percifull do agree to pay unto the said John C. Hale and M. H. Wood, their heirs and assigns, the value of all improvements which may be included in their part of said land above mentioned, which sum is to be paid to the credit of the ten thousand dollars agreed on to be paid by the said John C. Hale and Milus H. Wood, their heirs and assigns, as the consideration of the conveyance to be made or caused to be made by the said Sarah and David Percifull, their heirs and assigns. Furthermore, be it expressly understood that the furniture and improvements thus sold and purchased, and set forth in said contract, shall be held by the —— Sarah and David Percifull as security for the faithful discharge of the three thousand dollar bond, though equally understood by the parties that said furniture and improvements thus sold and purchased shall remain in the hands of the said Hale and Woods until all of the aforesaid bond shall have become due, which, if punctually paid, the said securities is then null and void, but if not punctually paid the aforesaid securities remains in full force and virtue.

In testimony whereof, we have hereunto set our hands and seals, this the sixteenth day of November, A. D. 1840.

	JOHN C. HALE.	[SEAL.]
Attest,	MILUS H. WOOD.	[SEAL.]
WARREN DUNHAM,	SARAH PERCIFULL.	[SEAL.]
JOHN C. KUYKENDALL.	DAVID PERCIFULL.	[SEAL.]

STATE OF ARKANSAS,
County of Hot Springs.

Be it remembered, that on the 24th day of May, A. D. eighteen hundred and forty-one, before me, Lawson Runyan, Clerk of the Circuit Court with and for the county aforesaid, and State of Arkansas, appeared in person Sarah Percifull and David Percifull, to me per-

sonally known to be the names, appear upon the within and foregoing deed or instrument of writing as two of the grantors and contracting, and stated that they had executed the same for the purpose or purposes and consideration therein mentioned and set forth freely and of their own choice. And I do so certify.

In testimony whereof, I have hereunto set my hand as clerk aforesaid, and affixed the seal of my office at Hot Springs, this 24th day of May, A. D. 1841.

[SEAL.] LAWSON RUNYAN,
Clerk of the Circuit Court.

STATE OF ARKANSAS,
County of Hot Springs.

I, Lawson Runyan, Clerk of the Circuit Court, and ex-officio Recorder within and for the county aforesaid, do hereby certify that the annexed and foregoing instrument of writing was filed for record in my office on the twenty-fourth day of May, eighteen hundred and forty-one, and the same is now duly recorded in record book of deeds and mortgages (A), pages 231, 232, 233, and 234.

In testimony whereof, I have hereunto set my hand as clerk as aforesaid, and affixed my official seal at Hot Springs, this twenty-fourth day of May, eighteen hundred and forty-one.

[SEAL.] LAWSON RUNYAN,
Clerk and ex-officio Recorder.

To the admission of which as evidence the plaintiffs objected, and the Court sustained the objection, to which opinion of the Court in sustaining said objection and refusing to admit said deed and certificate, the defendant at the time excepted and asked for time to prepare his bill of exceptions, which is granted him.

Thereupon the defendant offered in evidence a quit-claim deed from David Percifull to John C. Hale, with the certificates thereto attached, after first having proven the death of Sarah Percifull prior to its date, in the words and figures following, to wit:—

STATE OF ARKANSAS,
Hot Spring County, ss.

Know all men by these presents, that I, David Percifull, citizen of the County of Hot Springs, and State of Arkansas, have this day bargained and sold, and transferred and delivered, and by these presents do bargain, sell, and deliver, unto John C. Hale, likewise of said county and State, his heirs, assigns forever, all of my right, title, and interest, and in and unto a certain tract or parcel of land situate, lying, and being in the aforesaid county and State, known as the Hot Springs, and being known and designated as the southwest quarter of section (33) thirty-three, township two (2), south of range (19) nineteen, west of the fifth principal meridian in the district of lands, to sale at Washington, Arkansas, said tract being the same held and owned by me as the legal heir and lawful repre-

sentative of my late father, John Percifull, deceased, and it is my request and desire that a patent may issue in the name of the said John C. Hale, his heirs or legal representatives for the same.

In consideration whereof, I do hereby acknowledge the receipt in full for the same the sum of eight thousand dollars in cash in hand to me paid by him, the said John C. Hale, before the sealing and signing of this deed; and I, the said David Percifull, do hereby warrant and guarantee forever unto the said John C. Hale, as aforesaid, against the claims of all persons claiming by, through, or from me in any manner whatever; and further, from this day henceforth do place and consider him, the said John C. Hale, now in possession of all the premises aforesaid together with all and singular the appurtenances and improvements thereunto attached in and every whatever.

Witness my hand and seal, at Hot Springs, this the 10th day of January, 1848. DAVID PERCIFULL. [SEAL.]

Witnesses,
LORETTA T. HUNTER,
WILLIAM G. RECTOR.

County of Hot Springs, to wit:

Be it remembered, that on this 10th day of January, 1848, personally appeared David Percifull, the grantor in the above and foregoing deed, before the undersigned, Justice of the Peace, Hot Spring County, and State of Arkansas, and acknowledged the same as for his act and deed, sign and seal for the consideration and purposes therein mentioned and set forth, and I so certify.

Attest. LAWSON RUNYAN, *J. P.*

STATE OF ARKANSAS,
County of Hot Springs.

Be it remembered, that on this 10th day of January, A. D. 1848, personally appeared Elizabeth D. Percifull, wife of David Percifull, whose name appears upon and is subscribed to the annexed and foregoing (instrument of writing) deed before the undersigned, justice of the peace, and being examined apart from her said husband, acknowledged and declared that she had signed and conveyed her right of dower in the premises therein mentioned, freely and of her own accord, without any fear or compulsion of her said husband, and I so certify.

Witness my hand and seal, at Hot Springs, this 10th day of January, 1848. CHARLES BURKE, *J. P.*
ELIZABETH PERCIFULL.

Filed for record in my office on the 14th day of Jan'y, A. D. 1848.
WILEY PATTERSON, *Clerk.*

STATE OF ARKANSAS,
County of Hot Springs.

I, Wiley Patterson, Clerk of the Circuit Court, and ex-officio re-

corder for the county aforesaid, do hereby certify that the annexed and foregoing instrument was filed for record in my office on the 14th day of January, 1848, and the same is now duly recorded in record book "B," pages 284 and 285.

In testimony whereof I have hereunto set my hand and affixed my official seal, at Rockport, this 14th day of January, 1848.

[L. S.] WILEY PATTERSON,
Clerk and ex-officio Recorder.

To the admission of which, as testimony, the plaintiffs at the time objected, and the Court sustained said objections, to which opinion of the court in sustaining said objections, and refusing to permit said paper to be read as evidence, the defendant at the time excepted, and asked for time to prepare his bill of exceptions, which was granted him. Whereupon the defendant offered an affidavit of John C. Hale, in the words and figures following, to wit:—

STATE OF ARKANSAS,
County of Hot Springs, ss.

I, John C. Hale, do solemnly swear that the original deed from John Percifull to Ludovicus Belding, or rather acknowledgment of tenancy upon the part of Ludovicus Belding to and from John Percifull, dated April 2d, 1831, is not in his custody, or under his control, and that I have made search for it and cannot find it, but the same was forwarded to the general land office at Washington City, D. C., and he believes the same has been lost, a copy of which is presented. J. C. HALE.

Sworn Feb'y 28th, 1856.

JNO. P. EMERSON, *Clerk.*

And then produced and offered to read in evidence a written agreement under seal, in relation to said Springs, between Ludovicus Belding and John Percifull, which in the words and figures following, to wit:—

Know all men by these presents that I, L. Belding, of the County of Hot Springs, and territory of Arkansas, do acknowledge and make known, that I, the said Belding, did lease the buildings and improvements at the Hot Springs of John Percifull, and acknowledge his right to said improvements, and that I have now, before this date, leased said buildings and all the privileges (except three cabins, two of which are not mine), to Richard C. Hawkins, until the first day of January, eighteen hundred and thirty-three, then and at which time I, the said Belding, agree and bind myself to deliver all and every part of the buildings and improvements at said Hot Springs that I have or ever had, in the same condition as said Hawkins is to deliver to me, unto John Percifull, if he demand the same, and that I have no pretensions to the improvements of said Springs, except under the claim of the said John Percifull. Given under my hand this 2d of April, A. D. 1831. L. BELDING.

STATE OF ARKANSAS,
County of Hot Springs.

Be it remembered, that Warren Dunham this day appeared in the County Court in session at Hot Springs, and being duly sworn for the purpose, on oath deposeth and sayeth that the annexed and foregoing instrument of writing of L. Belding, whose name is subscribed thereto, and that said L. Belding did within or a short time after the date thereof proffer to acknowledge the same as for his act and deed for the purpose therein set forth, and that the deponent was at that time the acting Judge of Hot Springs County, and further deponent sayeth not.

his
WARREN × DUNHAM.
mark.

Sworn to and subscribed in open court, this 5th day of January, A. D. 1842. LAWSON RUNYAN, *Clerk.*

STATE OF ARKANSAS,
County of Hot Springs.

Be it remembered, that I, H. A. Whittington and Cumberland Polk, this day appeared in open court of the county of Hot Springs, and on their oath depose and say, that the annexed and foregoing instrument of writing, is to the best of their knowledge and belief, in the hand writing of L. Belding, whose name appears upon and is subscribed thereto, that they have often seen him write; and further these deponents say not.

H. A. WHITTINGTON.
C. POLK.

Sworn to and subscribed to in open court, this 5th day of January, 1842.

Attest. LAWSON RUNYAN, *Clk.*

STATE OF ARKANSAS,
County of Hot Springs.

I, Lawson Runyan, Clerk of the Circuit Court and *ex-officio* recorder within and for the county of Hot Springs, and State aforesaid, do hereby certify that the annexed and foregoing instrument of writing was filed for record in my office on the 10th day of January, eighteen hundred and forty-two, and the same is now duly recorded in record book A of deeds and mortgages, pages 265, 266, 267.

In testimony whereof I have hereunto set my hand as such clerk and affixed the seal of my office at Hot Springs this tenth day of January, A. D. eighteen hundred and forty-two.

[L. S.] LAWSON RUNYAN,
Clerk and ex-officio Recorder.

STATE OF ARKANSAS,
County of Hot Springs.

I, Jno. P. Emerson, Clerk of the Circuit Court and *ex-officio* recorder within and for said county, do hereby certify that the foregoing three pages contain a true, perfect, and complete copy of the record in my office, as recorded in record book A of deeds on pages 265, 266, and 267.

In testimony whereof I have hereunto set my hand as such clerk and *ex-officio* recorder, and affixed my seal of office at the county aforesaid, this 2d day of February, A. D. 1856.

[L. S.] JNO. P. EMERSON,
Clerk and ex-officio Recorder.
By AUGUSTUS D. HARDY, *Dep'ty Clerk.*

To the admission of which as testimony the plaintiffs objected, and the Court sustained his objection, to which opinion and judgment of the Court in sustaining said objection and in refusing to admit said paper to be read as evidence, the defendant at the time excepted and asked for time to prepare her bill of exception, which was granted her.

Whereupon the defendant produced a certified copy of the testimony of witnesses taken before the Register and Receiver of the Land Office at Washington, on an application for a pre-emption by John Percifull's representatives, on the southwest quarter of section thirty-three, in township two south of range nineteen west, together with the certificates thereto appended, and proved the signature of the register, and which were in the words and figures following, to wit:—

HEMPSTEAD COUNTY,
State of Arkansas, sct.

Depositions of witnesses produced before the Register and Receiver of the Land Office at Washington, Arkansas, in support of the pre-emption claim of John Percifull, deceased, on this 10th day of January, A. D. 1851.

Mr. David Basset, being first duly sworn, testifies and says as follows, to wit:—

I have seen Silas Dodd, but have no particular acquaintance, and believe him to be dead. I did know Thomas Holman, and believe him to be dead. I did also know Warren Dunham, and believe him to be dead. Messrs. Percifill, Holman, and Dunham did reside in the neighborhood of the Hot Springs. I know of them residing there. I don't recollect at what time they died, but they did reside in the neighborhood up to the time of their death. They have been dead for a number of years. I am at a loss to know at what time they did reside there, but they were there in 1828 and 1829. I believe I came there in February, A. D. 1828, and found Mr. Holeman, Mr. Dunham, and Sarah Percifull were then residing

in the neighborhood of the Hot Springs. I am acquainted with the character of Mr. Dunham (difference of opinion expressed with regard to the admissibility of testimony regarding the character of Mrs. Percifull by the register and receiver, consequently the testimony is admitted. The receiver objects, on the grounds that there had been no attempt made to invalidate the testimony of Mrs. Percifull, Mr. Dunham, and Holman, in that the register and receiver know neither of the parties. The register and receiver admit that they nothing of either party, whether living or dead). I am acquainted with the character of Sarah Percifull, and know it to be good for truth and veracity, and worthy of belief on oath. I am also acquainted with the character of Warren Dunham and Mr. Holeman, and know them to be men of truth and veracity, and know them to have been worthy of belief upon oath.

I know but little of Mr. Dod, therefore cannot tell respecting his character. Signed, DAVID BASSETT.

Sworn to and subscribed before me, this 20th day of January, A. D. 1851. B. F. HEMPSTEAD, *Rec'r.*

And also, at the same time and place, appeared Samuel Sorter, and first being duly sworn, testifies as follows, to wit:—

I am the person whose testimony was taken heretofore in support of the Hot Spring pre-emption claim, in the name of Ludovicus Belding. I was acquainted with Mr. Dunham. I do not recollect at what time I became acquainted with him (Warren Dunham), but did know him to reside at the Hot Springs A. D. 1836, and was acquainted with him from thence up to the time of his death. He possessed a good character as far as I know, and was worthy of belief upon oath.

I was acquainted withThomas Holman. I first knew him at the Hot Springs about the year 1829. I knew him till his death. I always understood him to be a good man, and I would believe him under oath. I did not know Silas Dod. I have heard of a person by that name who was said to be a preacher in the neighborhood of the Hot Springs. Have known Mrs. Percifull from 1829 until her death, and should consider her worthy of belief on oath. I believe her to have been a good woman and worthy of belief on oath, and further he saith not. SAM'L SORTER.

Sworn to and subscribed before me, this 20th day of January, A. D. 1851. B. F. HEMPSTEAD, *Rec'r.*

And also at the same time and place appeared Abner Hignight, and first being duly sworn, testifies as follows, to wit:—

I was acquainted with Silas Dod; I first saw him at what is called the Warm Springs Landing, on the Ouachita; he went out there and attended the Springs.

He was there, and I was living at Mr. John Percifull's at that time: that was in 1812, I think. I was acquainted with him (Mr.

Dood), more or less until his death. I know nothing against his character for truth and veracity, and could certainly believe him under oath.

Cross-examined by Henry M. Rector.

I do not know that I have ever seen the deposition of Mr. Dod heretofore taken. But I do not know the substance of his testimony. And further the deponent says not.

ABNER HIGNIGHT.

Sworn to and subscribed before me, this 20th day of January, 1851. B. F. HEMPSTEAD, *Rec'r.*

And also at the same time and place appeared William Davis, and first being duly sworn, testifies as follows, to wit :—

I was acquainted with Warren Dunham in his lifetime, also with Thomas Holman, and Mrs. Sarah Percifull; used to be acquainted with Silas Dod, but cannot tell when.

Ques. Were you acquaintedwith the character of Warren Dunham among his neighbors for truth and veracity? Ans. I was.

From his character among his neighbors would you believe him upon oath? Ans. I should. Were you acquainted with the character of Thomas Holman for truth and veracity among his neighbors? Ans. I was. Give his character among his neighbors would you believe upon oath? Ans. I would. Were you acquainted with the character of Mrs. Percifull among her neighbors for truth and veracity? I was. From that acquaintance would you believe her under oath? I certainly should. I lived a neighbor to her for a little upwards of twenty years. Were you acquainted with the character of Silas Dod among his neighbors for truth and veracity? I cannot say that I was particularly, but have seen him several times. I knew the man many years since in Magnet Cove. And further he says not.

his
WILLIAM + DAVIS.
mark

Sworn to and subscribed before me, this 20th Jan'y, 185 .
B. F. HEMPSTEAD, *Rec'r.*

And also at the same time and place appeared Jonathan Irons, and first being duly sworn, testifies as follows, to wit :—

I was acquainted with Warren Dunham in his lifetime, also with Thomas Holman, and Mrs. Sarah Percifull. Were you acquainted with the character of Warren Dunham among his neighbors for truth and veracity? I was. From his character among his neighbors would you believe him on oath? I should. Were you acquainted with Thomas Holman's character for truth and veracity among his neighbors? I was: he was said to be a truthful man. Would you believe him on oath? Yes. Were you acquainted with the character of Mrs. Percifull for truth and veracity among her neighbors? I was. From that acquaintance would you believe her under oath?

Yes, I would. Were you acquainted with the character of Silas Dod for truth and veracity among his neighbors? I was slightly. From that acquaintance would you believe him under oath? Yes, I would. How have you known the above-mentioned persons previous to their deaths? Ans. I cannot tell when they died, but became acquainted with them about the year 1825 or '26.

And further deponent says not.

(Signed) JONATHAN IRONS.

Sworn to and subscribed before me this 20th January, A. D. 185 .

B. F. HEMPSTEAD, *Rec'r.*

And also at the same time and place personally appeared William C. Kelley, and first being duly sworn, deposes as follows, to wit:—

I was acquainted with Warren Dunham in his lifetime, and was also acquainted with Thomas Holman and Mrs. Sarah Percifull. I was not acquainted with Silas Dod. I never saw him. Were you acquainted with the character of Warren Dunham for truth and veracity among his neighbors? His truth and honesty was not relied on, I think, among his neighbors in some instances. Were you acquainted with the character of Mrs. Percifull for truth and veracity among her neighbors? Very well. She was a first rate lady, as good as Arkansas contains. From that acquaintance would you believe her on oath? Yes, I would. Were you acquainted with the character of Thomas Holman for truth and veracity among his neighbors? I have been acquainted with Mr. Holman; we were raised from boys together. I think him a truthful man and reliable man. From this acquaintance with him, would you believe him under oath? Yes; I should think his testimony ought to be good. And further deponent says not.

his

(Signed) WILLIAM C. + KELLEY.

mark.

Sworn to and subscribed before me this 20th January, 1851.

B. F. HEMPSTEAD, *Rec'r.*

And also at the same time and place personally appeared Richard C. Hawkins, and first being duly sworn for the purpose, deposes and says as follows, to wit:—

Ques. Were you acquainted with Thomas Holman and Warren Dunham? I was. Ques. Were you acquainted with the character of each for truth and veracity among their neighbors? So far as I knew the men they were considered credible men. From this acquaintance would you believe them under oath? I certainly should, in any case where they were directly interested.

Cross-examined by Henry M. Rector.

Have you ever seen the depositions of Mr. Holman? Yes; I saw the deposition of Mr. Holman this morning. Did Mr. Holman ever

tell you that the facts were different from what they were stated to be in his said deposition? What was his statements about the facts? So far as my recollection serves me, Mr. Holman told me he was quite a youth at the time the improvements were made at the Springs. But he informed me that the first improvements were made by a Frenchman about the year 1811 and 1812, and that they occupied them about this time, and when he went away he sold his improvement to Jno. Percifull. Mr. Holman has told me frequently that Mr. Percifull had camped and hunted at the Hot Springs for several years, but that the first houses and cultivations at the said Springs were made by a Frenchman (whose name I did not recollect), and when he left he gave or sold his improvements to Mr. John Percifull. This was about or within the years of 1811, 1812, or 1813.

Ques. Did Holman in any of these conversations ever tell you where he, Perciful, lived about that time? He told me that he lived near the mouth of the Gulpha on the Ouachita River at that time, say from 1811 to 1813. What time did Holman tell you that Mr. Percifull came to reside at the Hot Springs? Ans. He told me that Mr. Percifull never did permanently reside and cultivate at the Springs until 1815.

Did Mr. Holman ever tell you that he had ever been a member of (Mr. Percifull) family? Ans. I do not recollect that he did.

Question on the part of the Percifull.

Did Mr. Holman tell you that the facts in his deposition were not correct, or do you mean to say that what he told you were facts different from those stated in the deposition? I have not seen Mr. Holman since he made that deposition, nor for years before; what he told me was between the years 1829 and 1832, whilst I was living at the Hot Springs. And further he says not.

RICHARD C. HAWKINS.

Sworn to and subscribed before me, this 20th Jan'y, 1851.

B. F. HEMPSTEAD, *Rec'r.*

Testimony introduced at the same time and place on the part and behalf of Henry M. Rector.

And also appeared at the same time and place as aforesaid Jacob Barkman, who first being duly sworn, deposes and says as follows, to wit:—

Ques. Were you acquainted with Mrs. Sarah Percifull, the wife of John Percifull, and the claimant of said Hot Springs?

Ans. I was acquainted with her before she was married, and have been acquainted with her since.

Do you know when she came to the Hot Springs in Arkansas?

Think it was in the fall of the year 1813 or 1814. Were you acquainted with Warren Dunham? Yes. Do you know when he came there? I think about 1814 or 1815. Did you ever have any

conversation with him about the claim of Percifull to the Hot Springs? Yes, frequently; Warren Dunham lived with me one or two years; in the course of time we had several conversations relative to Mr. Percifull's claim to the Hot Springs; the understanding between me and him was that Percifull never had any claim to said Springs. We considered that Percifull never lived at the Springs until the year 1813. He lived during or part of the year 1819 and kept a boarding-house, but do not recollect of his cultivating at the time. During my acquaintance with Mr. Percifull, he went and resided upon Red River two years. I remember nothing more of the conversation between Dunham and myself. Were you acquainted with Silas Dod? Yes. Did you ever have any conversation with him relative to Mr. Percifull's claim to said Springs? I do not now recollect of any.

Cross-examined on the part of Percifull.

Ques. At what time did Mr. Percifull remove to Red River? I think in or about the year 1816. Do you know anything about the character of Silas Dod among his neighbors for truth and veracity? I do not know anything about his character in this respect. In some things I think his character good, and in other things good for nothing. He was a harmless, ignorant man. He might do good or not do good.

Ques. on the part of Beldings.

How long have you been acquainted about the Hot Springs? I think from June or July, 1812 or 1813, until about two years since. I have frequently been there during the last twenty-four years; I have, however, been but very little about said Springs.

At what distance have you lived from the Hot Springs since 1812? Ans. About 35 miles; and further deponent says not.

J. BARKMAN.

Sworn to and subscribed before me, this 20th day of Jan'y, 1851.

B. F. HEMPSTEAD, *Rec'r.*

And also at the same time and place appeared Mr. Charles Rapley, who by consent of parties was examined in chief, on the behalf of Henry M. Rector, and being first duly sworn deposes and says as follows, to wit:—

In the summer of 1833 I was in bad health, and went to the Hot Springs for the benefit of the same. Mr. Physic was keeping public house at said Springs at the time. Finding my health did not improve, after being there some weeks, I was advised to go and stay at Mr. Percifull's, on the Ouachita River, at which place I spent some time. I think this was in August of the year 1833. Whilst there, I had frequent conversations with him (Percifull) in relation to his manner of living when he first came to the country. He informed, in speaking of his first coming to the country, that he came for the purpose of hunting; that he visited the Territory, I am not positive as to the date, but I think he said about the year 1812

or prior; that he was absent from the country for some time, and returned (I am not certain whether he said in 1812 or 1813), but somewhere about that time. I asked him what his occupation was during that period; he replied it was hunting, principally. He used frequently to narrate his buffalo-hunts, &c. I asked him how he lived; he replied that he moved about from one place to another, living in a camp. He told me settled the place where he then lived, on the Ouachita River, in the year 1813 or 1814, but am not certain which, and that he had lived there and cultivated from that *that* time up to the period when I was there. Where he then resided was some six or eight miles from said Springs. I have been frequently at the Springs since the year 1833, but was never there before that time; but I have never seen anything like cultivation there. The land about the Springs is very sterile and rocky. And further he says not.

CHAS. RAPLEY.

Sworn to and subscribed before me, this 20th Jan'y, 1851.

B. F. HEMPSTEAD, *Rec'r.*

Whereupon the said investigation was adjourned until to-morrow.

Tuesday Morning, January 21st.—Met pursuant to adjournment, and proceeded to the investigation of the pre-emption claim of John Percifull.

Examination in chief opened.

Depositions of Sarah Percifull offered in evidence. Its reception objected to by Henry M. Rector and the representatives of Ludovicus Belding, deceased.

The opinion of the Receiver is, that the depositions of David and Sarah Percifull shall be received simply as a notice of a pre-emption claim, and are rejected to by him as evidence.

The Register is of opinion that the said depositions should be received for what weight they are entitled to.

Protest of Henry M. Rector against any action of the land officers on the pre-emption claim of Percifull and Belding, entered by consent of parties as of yesterday morning, 20th inst., and which protest is here referred to as paper A, No. 1.

The depositions of Thomas Holman offered, and received by the Register and Receiver for what they are worth. Also the depositions of Warren Dunham, offered and likewise received by the land officers for what they are worth. Objections are offered to the reception of both Holman's and Dunham's depositions, on the part of both Rector and Belding.

The depositions of Silas Dod offered, and objected to by Rector and Belding, but received by the land officers for what they are worth.

The deposition of James Neal and Thomas Woodward offered, and objected to on the part of Rector and Belding, on the grounds that they are both living and reside within the State, in seventy miles of this place.

Depositions of John C. Hale offered, and objected to by the other parties, on the grounds that he now being present, and acknowledges himself interested. All copies of deeds, leases, conveyances furnished by the General Land Office to the Register and Receiver, to be received and considered for what they are worth.

The depositions of Fullerton and Runyan offered, and objected to by Rector and Belding, on the grounds that they are both still living near the Hot Springs in this State. All the above-mentioned depositions, deeds, leases, &c., are received by the Register and Receiver for what they are worth.

The testimony on the part of the application of the legal representatives of John Percifull, deceased, is here closed.

Whereupon Henry M. Rector introduced the following testimony in opposition to the claim of the legal representatives of John Percifull, dec'd.

Jacob Barkman, a witness on the part and for the party aforesaid, being duly sworn, deposes as follows, to wit: Ques. At what time did you come to this country? Ans. I came here in 1812, on the 7th of January. I landed on the Ouachita River. What time were you at the Hot Springs? I think it was in June, 1812. How long did you remain there at that time? I think about two or three days. Were there any improvements there at that time, and if so, of what character were they? There was a few houses, not exceeding a half a dozen. There was also some camps and tents there. What description of houses were there? Ans. They were log-cabins, small and of little value. Were there camps there at that time? Ans. There were. Who were they in possession of them at that time? Ans. They were in possession of various individuals who came there to attend the Springs. Were there any Indians about in the vicinity at that time, or some two or three years after? Ans. There were some who came there to attend the Springs, but not many. What tribe were these? Ans. I do not recollect. They were as likely to be Choctaws as any, for the Choctaws were in this county at that time. Do you recollect the names of any of these individuals who were there during the summer of 1812? Ans. I recollect a person by the name of Fitz Gibbons, also two brothers of the same, and his mother. Were they in possession of those houses or in camps, or how did they live? Ans. They lived in what I should call a camp. How long did these individuals remain there? They were there a part of two years during the summer seasons of eighteen and 12 and 1813, and I do know but in the summer of 1814. Did any of these visitors at the Springs stay there a whole year? Ans. There was a man by the name of Gray who did stay there the winter of 1814 and 1815. Were the Fitz Gibbons' residences of Louisiana or of Missouri Territory? Ans. Gray came from Louisiana, but the Fitz Gibbons' came from I know not where. Did you, when there, go over across a little branch where the garden is now situated, &c.? Ans. I have been all around there, and on

or prior; that he was absent from the country for some time, and returned (I am not certain whether he said in 1812 or 1813), but somewhere about that time. I asked him what his occupation was during that period; he replied it was hunting, principally. He used frequently to narrate his buffalo-hunts, &c. I asked him how he lived; he replied that he moved about from one place to another, living in a camp. He told me settled the place where he then lived, on the Ouachita River, in the year 1813 or 1814, but am not certain which, and that he had lived there and cultivated from that *that* time up to the period when I was there. Where he then resided was some six or eight miles from said Springs. I have been frequently at the Springs since the year 1833, but was never there before that time; but I have never seen anything like cultivation there. The land about the Springs is very sterile and rocky. And further he says not.

CHAS. RAPLEY.

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B. F. HEMPSTEAD, *Rec'r.*

Whereupon the said investigation was adjourned until to-morrow.

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this piece of tillable land cultivated by Foster, as mentioned, is? I suppose from 50 to 80 yards above the Hot Springs.

Cross-examined by Representative of Percifull.

Ques. In 1812, when you spoke of living at Percifull's place, at the mouth of the Gulpha, was he a married man? Ans. He had no wife and children there. How often were you at the Springs in 1811? Ans. I was not there at all as I know of. How often were you at the Springs in 1812? I do not recollect that I was there more than once in 1812. How often were you there in 1813? Ans. I was there probably two or three times, but do not recollect precisely how many times. Did Percifull remain in the vicinity of the Hot Springs from 1812 to 1815, or remove from the place? Ans. He remained in the vicinity of the Hot Springs, and did not remove. Did the persons at the Springs in 1812, 1813, and 1814 board themselves? Ans. They pretty generally carried their own provisions there, or obtained them by hunting. Some had hunters, and Mr. Percifull hunted for some. Who was in possession of the Hot Springs the first time you visited them after 1819? I do not recollect.

And further deponent says not. J. BARKMAN.

Sworn to and subscribed before me this 21st day of Jan'y, A. D. 1851. B. F. HEMPSTEAD, *Rec'r.*

At the same time and place appeared Mr. Abner Highnight, who being first duly sworn deposes as follows, to wit:—

Ques. When did you first come to the territory of Arkansas? Ans. I think it was in 1810, but might be in 1811. I am not certain which it was. What part of the country did you first stop at? Ans. At Stephen's Salt Works, on the Ouachita River.

Do you know whether it was in 1810 or 1811? I am inclined to think it was in 1811. How long did you remain at the salt works? Ans. I had been knocking about there for some time, say two or three months. To what part of the country did you go when you left the salt works? Ans. I went up to Mr. Percifull's, on the Ouachita River. Do you recollect at what time of the year it was when you arrived at Percifull's? Ans. I do not recollect at what time it was. How long did you live with Mr. Percifull on the Ouachita River? Ans. I stayed there one or two years, making that my home. How far is that place at which you stayed from the Hot Spring? Ans. About 7 miles. Do you know whether this John Percifull is the same man whose heirs are now claiming the Hot Springs? Ans. He is the same man, as I understand. Do you say that there was the residence of Mr. Percifull? Ans. Yes. Are you able to state in what year it was you left Mr. Percifull's house? Ans. I think it was in the latter part of the year 1813. Were you at his house the next year or the year following? Ans. I think the next time I was there was in 1815. Was Mr. Percifull living at the original place then? Ans. He was, and married, I think. What sort of a place was

that, as regards cultivation and improvements? Ans. When I first went there he had five or six acres cleared and under fence. There was a small house or cabin. Was that farm increased or enlarged when you were there? Ans. Percifull hired me to clear him five acres adjoining the other cleared land; he also hired me to make him two thousand rails. I hired a man by the name of Morrow to clear about three acres for Percifull, all adjoining the other cleared land. I was instructed so to do by Percifull. I did this work in 1812. I done some of the work in 1811, and finished it in 1812. Was the ground in cultivation when you were there? Ans. It was cultivated with corn and potatoes. Did you assist Mr. Percifull in the cultivation of that ground? Ans. Very little. Who did cultivate it? Ans. Mr. Percifull. He would sometimes hire work from others, and pay in buffalo-meat for the same. After you left, in 1813, when did you return? Ans. In 1815. Is that the same place on the Ouachita where Mr. Percifull continued to live until he died? Ans. It was the same place. Do you recollect the year in which Mr. Percifull died? Ans. No; I have no knowledge. Were you at the Hot Springs in 1811, 1812, and 1813, while you lived with Percifull? Ans. I was, frequently. What was the extent of the improvements at the Hot Springs when you first visited them, at the time you were living at Percifull's? Ans. There were a few "half-faced" camps in 1813; Manuel Proudhoune and his brother built a chunk of a house there; this was in the summer of 1812 or 1813, I would not be positive which. What sort of camps were those you spoke of? They are what are called half-faced camps. Whereabouts in the valley did these Mr. Proudhounes build the houses you speak of? On the west side of the creek, and opposite the main springs in the valley. Did you see any cultivation at the Springs when you lived with Percifull? Ans. There was a little piece of ground, I think about a fourth of an acre, situated a northeast course 60 or 80 yards from the main spring, directly under the mountain. He (Morrow) had some lettuce, watermelons, &c. cultivating there; this is all I can recollect of. How was that garden inclosed? There were two strings of bush fence, and one side was fenced by the mountain, forming a sort of three-sided piece of ground. Was there any other cultivations that you saw there during the years of 1812 and 1813, excepting this piece spoken of? Ans. There was none. Did Mr. Percifull cultivate any ground at the Springs himself at this time? Ans. Never while I stayed with him. Did he live at the Springs himself at any time while you stayed with him? Ans. He never did live there while I stayed with him. What were the relations that existed between you and Mr. Percifull at that time, and so on up to his death? Ans. We were like brothers all the time. Did Mr. Percifull leave that part of the country at any time, and remove to Red River? Yes. I met him moving, and he informed me that he was going to Long Prairie, on Red River. Do you recollect in what year he went and what year he returned from Red River? Ans. I think he went in 1816:

he remained something like two years, and returned. Did you see him on his return, and where did you see him? He stopped with me on his return for two or three days; I then lived on Stroud's Creek, in Clark County in this State. How was it, according to your understanding, that Mr. Percifull set up a claim to the Hot Springs? He told me he wanted to improve them, and let them get a name out, that they might be valuable. How did he found his claim thereto? The people looked up to him as the proprietor, because he furnished them provisions, breadstuff, and meat for those that did not want to kill it. Perciful, Cates, and Fulsom all helped to furnish provisions, &c. When did Mr. Percifull first live and cultivate at the Springs? Ans. Never, that I know of; I was there in the summer after Mr. Percifull returned from Red River in March, and have not been there since; I did not see Mr. Perciful at that time I was at the Hot Springs last, and have never seen him or his wife since he stopped at my house in Clark County on his return from Red River.

Cross-examined on the part of Belding's Heirs.

Ques. Did Mr. Percifull take his family and property, beds, &c. with him when he removed to Red River? Ans. He had both his family and goods, and I observed two mill-stones on an axle-tree with a horse harnessed to them.

When you returned to Mr. Percifull's on the Ouachita River, in 1815, did his farm appear as if he had been cultivating during the previous year?

Ans. It did.

Cross-examined by the Legal Representatives of John Percifull.

Ques. Did Mr. Percifull, in those conversations which you spoke of having with him in the years 1811, 1812, and 1813, in relation to his claim to the Hot Springs, say that the camps or cabins were his, and that the visitors came by his consent? Tell us all he said in these conversations, as near as you can recollect. Ans. In consequence of his doing so much for those invalids who came there, Mr. Percifull deemed that he had a claim to the Hot Springs, for he used to furnish those who had no money with provisions as well as those who had money; and when visitors left there they used to give up to him their camps, &c., considering him the proprietor of the Springs. Did he not also say in said conversations his object in claiming land upon which you say he lived, was to furnish corn and other provisions to the visitors at the Springs? Ans. Yes, he said it was for this purpose, that he might furnish supplies for the visitors at the Springs. At what season of the year did visitors usually attend the Springs? Ans. In the spring and summer, until the weather became too hot. Was John Percifull married or single in the years 1811, 1812, and 1813? Ans. If he was married, I did not know it; he had no wife him. Is Long Prairie on Red River, into which he (Percifull) said he was moving, in Arkansas?

Ans. I do not know whether it is or not. And further deponent says not. ABNER HIGNIGHT.

Sworn to and subscribed before me this 21st of Jan'y, 1851.
B. F. HEMPSTEAD, *Rec'r.*

This investigation is here closed until to-morrow, A. M., Jan'y 21, at 9 o'clock.
B. F. HEMPSTEAD, *Rec'r.*
WILLIAM H. ETTER, *Reg.*

January 21*st*, at 9 o'clock A. M.

Wednesday morning, January 22d, 1851. Met at 9 o'clock, and proceeded to investigation.

And at the same time and place appeared Bernard Boone, who being first duly sworn, deposes as follows, to wit:—

Ques. Do you recollect at what time you first came to this country? Ans. In 1804. How old a man are you? Ans. Fifty-seven. Did you ever know a man by the name of Mitchell Boone? Ans. Yes, he was my father. Is he the man who made the trace from Pine Bluff to the Hot Springs, called "Boone's Trace"? Ans. Yes. What part of the country did you stop at when you first came to this country? Ans. Two miles above Pine Bluff. Did you ever live at the Post? Yes; I have been raised at the Post. Were you ever at this place before? Yes; I was here twenty-seven years ago. Were you ever at the Hot Springs? Yes. When were you first there? Ans. In October, 1813. Were there any people at the Springs then? Ans. None. Any Indians? Ans. None. Who did you go to the Springs with? Ans. My two brothers, Joseph and Mitchell, and my father. Where did you come from there? From two miles above Pine Bluff. What did you go there for? Ans. To hunt bear, and beaver, and buffalo. Did you ever see any houses there? Ans. I saw no houses, but some three houses had been burned, and I saw some camps there, made of poles.

Did you see any field under cultivation there? Ans. I saw none, and had to cut the briers and bushes with my knife, in order to get to the Springs. Did you see Mr. Percifull at the time you were there? Ans. Yes; I saw him on the Ouachita River. How far from the Springs? Ans. Seven or eight miles. Where did he live then? Ans. On the bank of the Ouachita, where I saw him. Did Mr. Percifull have a house there? Ans. Yes; he had a log-house there. Did you trade any with Mr. Percifull at the time you saw him? Yes; I bought sugar and coffee, and paid him two beaver-skins in exchange. When was the next time you were at the said Springs? Ans. On the 15th of May, 1814. Were you at the Springs then? Yes. Who went with you at this time? Ans. Charles Rafeld, his wife, and two children—one a girl, aged seventeen or eighteen. What did you go there for then? Ans. To take Mr. Rafeld's sick daughter to the Springs for her health. How did you go there? Ans. On pack-horses. How long did you remain there? Ans. I went from there, with my father, and two brothers, and two

Quapaw Indians, to the Little Missouri River, to hunt, and returned to the Springs in the last of June, being absent from there about one month. Were there people there at that time? Ans. Yes; there were some 40 or 50 from Nachitoch there, and some of them built houses. Did you see Mr. Percifull there at that time? Ans. I did not, but saw Mr. Fulsom there. Where did Mr. Percifull live at that time? Ans. On the Ouachita River, where he lived before. What kind of a place did Mr. Fulsom have at the Springs at this time? Ans. He had a kind of cabin, built of poles about the size of my arm, and a pen where he kept three cows to furnish milk for the visitors. Where did Fulsom live at this time? Ans. He lived on the Ouachita River, above the mouth of the Gulpha, about three-quarters of a mile from Percifull's. Were you at this house? Yes. Did he have a farm there? Yes; he had corn growing there. When was the next time you came there afterwards? Ans. I cannot recollect, I was there so many times; neither can I say in what years I was there.

Cross-examined by Belding's Representatives.

Ques. Were the persons whom you saw at the Hot Springs in 1814 there merely as visitors, or permanent *setleds* there? Ans. They were there for their health, merely visitors. Of what nation are you? Ans. My father was a Frenchman, from France; I am part Quapaw; a very small portion Quapaw.

Cross-examined on the part of Percifull's legal Representatives.

Ques. You *saw* you cannot recollect the different years you were at the Springs after you were there in 1814; can you tell how many times you were there after the year 1814? Ans. One time in 1833; I was there six times in all; three of the times I cannot recollect the years in which I was there, as I passed there with some Indians. When you were at the Hot Springs in 1814, did you get acquainted with Sarah Ubanks, who was afterwards John Percifull's wife? Ans. I did not. How long did remain at the Springs, when you were there in October, 1813? Ans. I did not stop there at all; I only went to see the Springs, and returned immmediately. How long did you remain at the Hot Springs when you were there in June, 1814? Ans. I stayed two or three days there when I went there with Rafeld and family, and went to the Little Missouri to hunt, where I remained about a month, and returned again to the Springs, where I stayed two or three days, and returned again to Pine Bluff, where I then lived; it is about 80 miles from where I lived to the Hot Springs. And further he says not.

his
BERNARD × BOONE.
mark.

Sworn to and subscribed before me, this 22d day of Jan'y, 1851.
B. F. HEMPSTEAD, *Rec'r.*

At the same time and place appeared Richard C. Hawkins, who, being duly sworn, deposes as follows, to wit:—

Ques. Did you know John Percifull, the man whose heirs are now claiming the Hot Springs, and where? I became acquainted with John Percifull about the first of the summer of 1829. Where did he live then? His residence was on the Ouachita River, about 8 miles from the Springs. Did you ever have any conversation with Mr. Percifull relative to his first settlement in the Territory of Arkansas? I have. What was that conversation? Ans. Mr. Percifull told me that he and Isaac Cotes came to the Hot Springs in the year 1807, and they remained at the Springs during that year, camped there, and hunted, and in the spring of 1808 he went to the Ouachita River, and settled; and that he made the first bread that he ever had in the country with a wooden hoe, without any other implement to work with; he made this bread on the Ouachita River, the place where he was then living. And further this deponent says not.

RICHARD C. HAWKINS.

Sworn to and subscribed before me, this 22d January, A. D. 1851.

B. F. HEMPSTEAD, *Rec'r.*

Henry M. Rector here offered the two previous rejections of the Percifull pre-emption claim in evidence, as contained in a duly certified copy from the General Land Office, to the reception of which the legal representatives of Percifull objected.

These objections are overruled, and the Register and Receiver receive the rejections for what they are worth.

Hence closes the testimony on the part of Henry M. Rector.

Whereupon, neither of the parties interested introducing no further evidence either for or against the claim, the same was submitted for the decision of the Register and Receiver.

WM. H. ETTER, *Register.*
B. F. HEMPSTEAD, *Receiver.*

RECEIVER'S OFFICE, WASHINGTON, ARKANSAS, *Feb'y* 10, 1851.

Upon examination of all the testimony of all the legal heirs of John Percifull, deceased, for a pre-emption on the southwest quarter of section 33, in township No. 2, south of range 19 west, known as the Hot Springs tract, I find that John Percifull did actually inhabit and cultivate the tract of land above described, on and prior to the 12th of April, 1814. 2d. That his legal representatives or heirs are entitled to enter the same under the provisions of said pre-emption law of 12th of April, 1814, at the minimum price 125 per acre.

(Signed) B. F. HEMPSTEAD, *Rec'r, &c.*

REGISTER'S OFFICE, WASHINGTON, ARKANSAS, *March* 5, 1851.

Upon a careful examination of all the testimony produced by the heirs and legal representatives of John Percifull, deceased, in support of a pre-emption claim to the southwest quarter section (33), in

township No. (2) two, south of range (19) nineteen, west of the fifth principal meridian, and known as the tract of land upon which the Hot Springs are situated, in the State of Arkansas, as well as the testimony produced adverse to said claim, I am clearly of the opinion that the said heirs and legal representatives of John Percifull, deceased, having failed to establish actual inhabitancy and cultivation as required by the act of the 12th of April 1814, under which they claim, are not entitled to the benefit of pre-emption. The application to locate is therefore rejected.

W. H. ETTER, *Register.*

July 7th, 1852.

I, William H. Etter, Register of the Land Office at Washington, Arkansas, hereby certify that the foregoing five pages contain a true and correct copy from the original transcript of the testimony produced on the examination of this case before the register and receiver of the land office at Washington, Arkansas; and also a copy of the opinion of the register and receiver endorsed thereon, the original having been transmitted to the General Land Office.

WILLIAM. H. ETTER, *Register.*

And said defendant offered and did prove the genuineness of the signature of William H. Etter, and the plaintiffs objected to the reception of said transcript as testimony, and the Court sustained said objection, to which opinion of the Court, in sustaining said objection, and refusing to admit the same as testimony, the defendant at the time excepted, and asked for time to prepare her bill of exceptions, which is granted her.

The defendant then produced and offered to read as evidence, a certified copy of the proceedings and decree of Hot Spring Circuit Court in chancery, whereupon Henry M. Rector was plaintiff, and Francis Langlois and others were defendants, in relation to the Langlois claim, which proceedings, record, and decree, are in the words following, to wit:—

To the Honorable the Judge of the Circuit Court of the County of Hot Springs, in chancery sitting: This bill of complaint of your orator, Henry M. Rector, now exhibited, against Francis Langlois, Joseph Story, Samuel Hammond, Eliza A. Hammond, wife of the said Samuel, or their unknown heirs if they be deceased, all unknown to your orator and residents of the State of Arkansas:

Sheweth unto your honor, that on or about the 20th day of November, 1818, one Frederick Bates, recorder of land titles for the Territory of Missouri, by virtue of an act of Congress passed the 17th day of February, A. D. 1815, for the relief of the inhabitants of late County of New Madrid, in the Missouri Territory, issued to Francis Langlois aforesaid, one location certificate, commonly called a New Madrid certificate, giving the right to said Francis or his legal representatives to locate or enter by virtue thereof, with the principal deputy surveyor for the Territory of Missouri, two hundred acres of land on any of the

public lands of said territory, the sale of which is authorized by law, and that on the 10th day of November, A. D. 1818, the said Francis Langlois aforesaid, by his writing obligatory signed with his hand and also having affixed thereto his private seal, did, on the day put aforesaid, make, constitute, and appoint as his true and lawful attorney in fact with power of substitution, one Joseph Story of the Territory of Missouri, the said Joseph being he who is just referred to, and made defendant in this bill, by virtue of which power the said Joseph was fully empowered to dispose of, sell, or locate said New Madrid certificate aforesaid; a copy of which said power of attorney is hereto appended and made part of this bill, and marked as exhibit "A," the original by time or accident being mislaid or lost, and is not now in the power or possession of your orator, but is of record in your honorable court, and may be held for the inspection of your honor at any time if required.

Your orator would further represent, that on the twenty-fourth day of February, eighteen hundred and twenty, the aforesaid Joseph Story as said attorney in fact aforesaid of said Francis Langlois, entered into an agreement of bargain and sale with Samuel Hammond and Elias Rector, both of the then Territory of Missouri, by which he conveyed to the parties last aforesaid, all the right, title, interest, and estate that he himself had in his own proper right, as the assignee of the said Francis Langlois aforesaid, in the location certificate aforesaid, issued by Frederick Bates, recorder, &c., to said Francis Langloise or his legal representatives, for the two hundred acres to be located as aforesaid, whereby said Joseph covenanted with said Samuel Hammond and Elias Rector, and with their heirs assigns forever, that he would forever warrant and defend the title to the aforesaid certificate against the claim or claims of all and every person or persons whatsoever. A copy of which agreement and deed of bargain and sale is herewith exhibited and marked "B." The original of which copy is also a transcript from the record of the County of Hot Springs, properly certified and seal, &c., by the keeper of the records of said county, and will be filed for the inspection of the Court if necessary, being now in the possession of your orator, &c.

And your orator would further most respectfully represent, that by indenture made the 19th day of February, in the year of our Lord one thousand eight hundred and nineteen, by Samuel Hammond aforesaid, and his wife Eliza A. Hammond, the said Samuel and Eliza conveyed to Elias Rector aforesaid (all of the territory of Missouri), the one undivided moiety all their right, title, and interest in and to the New Madrid certificate aforesaid, together with the undivided half of all—and of the lands that had then been or might thereafter be located by virtue thereof; which conveyance was made for and in consideration of the sum of six hundred dollars in hand paid by said Rector to said Samuel, with a covenant to forever warrant and defend to the said Elias, and his heirs and assigns, the

title or right to the location certificate aforesaid, against the claim or claims of any person or persons whatsoever. A true and perfect copy of said indenture, as exhibited by the record of Hot Springs County, is herewith exhibited and marked "C," the original having been mislaid and out of the power and procurement of your orator.

And your orator would further most respectfully represent, that under the authority of the act of Congress aforesaid, and as the assignees of Francis Langlois, the said Samuel Hammond and Elias Rector, on the 27th day of January, eighteen hundred and nineteen, by application and notice addressed to Genl. Wm. Rector, Surveyor-General, &c. for the State of Illinois and Territory of Missouri, located the New Madrid certificate aforesaid, the outward lines of which location to run to the cardinal points, and to be surveyed in a square tract so as to include the Hot Springs, upon the waters of the Ouachita, now situated in Hot Spring County aforesaid, State of Arkansas; that in accordance with the above notice of location the boundary lines of the survey were marked and measured, and the corners thereof established on the 16th day of July, A. D. 1820, by one James S. Conway, deputy surveyor under General William Rector aforesaid, a copy of which survey, with field notes and plats, are hereto appended, and prayed to be taken as part of this your orator's bill, and marked "E," the original being made and returned to the office of the Surveyor-General aforesaid, in duplicates is at all times ready for the inspection of the Court, should the same be desired.

Your orator would further most respectfully represent that on or about the 28th day of February (1838), eighteen hundred and thirty-eight, one John C. Hale, deputy surveyor, by order of the then Surveyor-General, Edward Cross, made, at the request of your orator, a re-survey of said New Madrid location aforesaid, and returned his plat and field notes therefrom to the office of the surveyor Cross; that said Cross, as the law directs, made out and transmitted to Recorder of Land Titles for the Territory of Missouri, who was then in the person of Frederick R. Conway, whose office was kept at St. Louis, a correct transcript of the notice, or the location made by Hammond and Rector, and the field survey and plat returned by John C. Hale, deputy, &c. Whereupon said F. R. Conway, as such recorder and as the law directs, issued to your orator, as the legal representatives of Francis Langlois and those claiming under him, what is all commonly denominated a patent certificate, which certificate, location, plat of survey, &c., was transmitted to the Commissioner of the General Land Office, that the patent might, as the law provides, issue thereon; but in consequence of intervening obstacles, hatched up in competition (?) and found by the General Land Office, said patent, although often promised, has up to this moment has been unjustly withheld and denied to your orator; a copy of all of which latter papers, including the location, plat, and survey, made by deputy Hale, and patent certificate issued by Conway aforesaid, as recorder aforesaid, is hereunto appended and marked "D;" the original of

each being on file in the General Land Office at Washington City, from whence your orator produced them with the United States seal attached, and shall be at all times subject to the inspection and order of the Court.

And further your orator most respectfully begs leave to represent, that by the last will and testament of the aforesaid Elias Rector, who departed this life at Saint Louis aforesaid, in the summer of eighteen hundred and twenty-two, the whole of said Elias' estate, real, personal, and mixed, was bequeathed for her natural life to his surviving wife, Frances B. Rector, since Frances B. Trigg, with remainder to his three children, two of whom, William and Sydney Ann Rector, then of tender years, and without heirs, deceased on or about the month of December, in the year (1823) eighteen hundred and twenty-three.

That since that time, and recently, to wit, on the twenty-third day of April of the present year eighteen hundred and fifty-two, the said Frances B. Trigg departed this life; that, therefore, by the laws and provisions of said will aforesaid of said Elias Rector, your orator being the survivor of the three children, they having deceased without issue, is the only and sole heir and representative of the said Elias, and succeeds to his remaining estate.

Wherefore, your orator having shown, from the facts and papers, and in this bill referred to, that his father, Elias Rector, being the sole owner of the New Madrid certificate aforesaid and the lands located thereby—

He would pray of your Honor that a title be decreed him against all of the parties made defendants in this bill of complaint, all of them unknown to your orator, and non-residents of this State, and not being apprised of the death of the original party, to wit: Francis Langlois, Joseph Story, Samuel Hammond, and Eliza A. his wife. Your orator would ask that his title be established, both as to said Langlois, Story, and Hammond, and their heirs, if any there be; and that they each and all of them be required to come forward and make title, or that, in case of their default, this your hon's bill be taken as confessed, and proper orders be suggested to establish in your orator a full and complete title, as against all of said defendants, to said land so located by virtue of the aforesaid certificate, survey, patent certificate, &c. &c.

Wherefore, as in duty bound, your orator would ever pray, &c.

HENRY M. RECTOR,
By RECTOR & TRIGG, *Solicitors.*

"*A.*"

Know all men, by these presents, that I, Francis Langlois, of the County of New Madrid, and Missouri Territory, for good cause and consideration me thereunto moving, having made, ordered, and constituted and appointed, and by these presents as made, order and constitute and appoint Joseph Story, of the county and Territory

aforesaid, my true and lawful agent attorney in fact, irrevocable for the purpose following, to wit:—

Whereas, the liberality, justice and wisdom of the Congress of the United States, by an act approved the 17th day of February, 1815, entitled An act for the relief of the inhabitants of the late County of New Madrid, in the Missouri Territory, who suffered by earthquakes, provides that those whose lands have been materially injured by earthquakes shall be authorized to locate the like or a greater quantity on any of the public lands of the said Territory, the sale of which is authorized by law, and being one of those who are entitled to any of the provisions of said act—

Now know ye, that Francis Langlois have given, and hereby do give full power and authority to my said attorney to locate on any of the public lands in the said Territory any quantity of land which I may be entitled to, by virtue of the aforesaid act, for his own proper use, benefit and behoof, and that of heirs and assigns forever, and to sell and convey and transfer the same absolutely to any person or persons whatsoever, for such price and consideration which he may think fit. Also with power and authority to my said attorney to sell and convey unto the U. S. or any officer under the Government who receive the same, my injured land, being, lying, and situated in the County of New Madrid, in Missouri Territory, containing two hundred acres, it being part of the land confirmed by the late Board of Commissioners of Land Claims for the aforesaid Territory on Mony a Saint John, and generally in the premised to do, execute and perform all and whatsoever shall be requisite and necessary in as full a manner as I myself might or cause do, were I personally present.

Also with power of substitution hereby ratifying all and whatsoever my said attorney shall lawfully do or cause to be done by virtue hereof. In witness whereof, I hereunto set my hand and seal, this the 10th day of November, Anno Domini 1818.

his
FRANCIS + LANGLOIS. [L. S.]
mark.

Signed, sealed and delivered in the presence of
RICHARD T. WATERS.
THOMAS Y. HOMSLEY.

TERRITORY OF MISSOURI,
County of New Madrid.

I, Richard Tessums, clerk of the Southern Circuit Court within and for the County of New Madrid, do hereby certify that Thomas Y. Horsley, one of those subscribing witnesses to the within instrument of writing, this personally came and appeared before me, and whose oath according to law, that he was present and saw the within named and signed Francis Langlois signed, sealed and delivered, and heard him acknowledge the within and foregoing instrument of writ-

ing as his act and deed, hand and seal, for the use and purposes therein expressed, and that Richard T. Waters, the other subscribing witness, signed the same with himself and in the presence of each other.

In testimony whereof, there being no judicial seal yet procured for said county, I hereunto subscribe my name, and affix my own private seal, this November 18th, in the year 1818.

RICHARD TUSSUM, *Clerk.* [SEAL.]

Filed in my office for record, this 14th day of June, 1838.

IRA A. SABINE, *Clerk.*

STATE OF ARKANSAS,
County of Hot Springs, sct.

I, Ira A. Sabine, clerk of the Circuit Court and ex-officio recorder, do hereby certify that the annexed and foregoing instrument of writing was filed for record in my office, on the 11th day of June, A. D. 1838, and the same is now duly recorded in Record Book "A," page 118 and 119.

In testimony whereof, I have hereunto set my hand and affixed the seal of office, this 14th day of June, A. D. 1838, and of our Independence the seventy-second year.

IRA A. SABINE, *Clerk.*

STATE OF ARKANSAS,
County of Hot Springs, sct.

I, Lawson Runyan, clerk of the Circuit Court and ex-officio recorder within and for the county aforesaid, do hereby certify that the annexed and foregoing is a true and perfect copy from the record book deeds and mortgages, Book A, pages 118 and 119, as appears of record in said office.

In testimony whereof I have hereunto set my hand and caused the seal of said office to be affixed at Hot Springs, this 11th day of January, A. D. 1841.

LAWSON RUNYAN,
Clerk and ex-officio Recorder.

"*B.*"

This agreement, made and entered into this twenty-fourth day of February, one thousand eight hundred and twenty-one, by and between Joseph Story of one part, and Samuel Hammond and Elias Rector of the other part, witnesseth, that the said Joseph Story, for and in consideration of the sum of one dollar to him in hand paid by the said Hammond and Rector, the receipt whereof is hereby acknowledged, has granted, bargained, and sold, and by these presents grant, bargain, and sell, and convey to the said James Hammond and Elias Rector his right, title, and interest in certificate number four hundred and sixty-seven (467), issued by Frederick Bates, recorder of land titles for the Territory of Missouri, to Francis Langlois or his legal representatives, dated St. Louis, 26th November, 1818, for two hundred arpents, and deeded from

said Langlois to said Story, which deed is recorded at New Madrid; to have and to hold to the said Samuel Hammond and Elias Rector, their heirs or assigns forever. And the said Joseph Story, for himself, his heirs, and assigns, covenants to and with the said Hammond and Rector, their heirs and assigns, that he will warrant and ever defend to them, their heirs and assigns, the said certificate against the claim or claims of any person or persons whatsoever.

In witness whereof the said Joseph Story has hereunto set hand and seal the day and year above written.

JOSEPH STORY. [SEAL.]

Signed, sealed, and delivered in presence of

Fourth wrote over erasure before signing. J. W. GARHIM.

STATE OF MISSOURI, *ss.*

Be it remembered, that on the day of the date hereof, before the undersigned, a Notary Public of the county of St. Louis, in the territory aforesaid, duly commissioned, personally appeared Joseph Story, who acknowledged the within instrument of writing to be his act and deed for the purpose therein contained.

In testimony whereof I have hereunto set my hand and affixed my notarial seal, at St. Louis aforesaid, this 24th day of February, A. D. 1831.

[SEAL.] J. V. GARNIM, *N. P.*

TERRITORY OF ARKANSAS, *ss:*
County of Clark.

Be it remembered, that on the 22d day of July, A. D. 1821, the within deed or instrument of writing and certificate was received in the office of the Clerk of the Court of Common Pleas for the county aforesaid and ex-officio recorder, and duly recorded in book "A," pages 62 and 63.

HENRY L. BISCOE,
Cl'k and ex-officio Recorder.

STATE OF ARKANSAS,
County of Hot Spring, Sct.

I, Ira A. Sabine, Clerk of the Circuit Court and ex-officio recorder for the county aforesaid, do hereby certify that the annexed and foregoing instrument of writing was filed for record in my office on the 12th day of March, A. D. 1838, and the same is now duly recorded in record book A, pages 96, 97, and 98.

In testimony whereof I have hereunto set my hand and affixed the seal of my office at Hot Springs, this 12th day of March, in the year of our Lord one thousand eight hundred and thirty-eight, and of the independence of the United States the seventy-second year.

[SEAL.] IRA A. SABINE,
Clerk and ex-officio Recorder.

LOUISVILLE, *6th June*, 1838.

We hereby certify that the within and foregoing agreement of bargain and sale from Joseph Story to Samuel Hammond and Elias

Rector, together with the three official certificates thereon attached, and the endorsement and minutes made thereon by the clerk, are truly copied from the document purporting to be the original, and that we have carefully examined and compared the same.

Given under our hands the date above.

THOMAS JOYES.
G. W. BARCLAY.
R. V. SCOTT.

"C."

This indenture, made this 19th day of February, in the year of our Lord one thousand eight hundred and nineteen, by and between Samuel Hammond and his wife, Eliza A. Hammond, of the one part, and Elias Rector of the other part, all of town of St. Louis and Territory of Missouri, witnesseth, that whereas the said Samuel Hammond purchased of Joseph Story, as the attorney in fact of Francis Langlois, a certificate for two hundred arpents of land, commonly called a New Madrid certificate, said certificate being dated twenty-sixth of November, eighteen hundred and eighteen, and numbered four hundred and sixty-seven, said deed of Francis Langlois, by the said Joseph Story as the attorney in fact of the said Francis, bearing the 4th day of January, eighteen hundred and nineteen, which said New Madrid certificate has been located by said Samuel Hammond on the Hot Springs, on the Ouachita river, in the County of Arkansas in said territory:

Now the said Samuel and Eliza A. his wife, for and in consideration of the sum of six hundred dollars by the said Elias to the said Samuel in hand paid, the receipt whereof is hereby acknowledged, at and before the ensealing and delivery of these presents, have granted, bargained, sold, aliened, conveyed, and confirmed, and by these presents do grant, bargain, sell, and lieve, convey, and confirm, unto said Elias Rector, one undivided moiety of said New Madrid certificate, and the right and interest accruing or ensuing from the same; and also the one undivided moiety of the said lands, located as aforesaid, in virtue of said certificate, on the Hot Springs in the said county of Arkansas, or, if the said location should be removed by the parties hereto, the one undivided moiety of such lands as may hereafter be located, in virtue of said certificate, by the said parties hereto:

To have and to hold, unto the said Elias Rector, his heirs and assigns forever, the above sold one undivided moiety and interest in the said New Madrid certificate, and the said undivided moiety of said land, as aforesaid, located in virtue thereof, or which may hereafter be located in virtue thereof, in the event of the removal of the same by the parties hereto.

And the said Samuel, for himself, his heirs, executors, and administrators, doth by these presents covenant to and with the said Elias Rector, his heirs and assigns forever, that in, the said Samuel, and Eliza his wife, have the true and legal equitable title to said certificate, or the interest and property in the same.

In testimony whereof, we, said Samuel Hammond and Eliza A. Hammond, his wife, have hereunto set our hands and seals, the day and date first above written, with the words "in virtue of said certificate" intended.

SAMUEL HAMMOND. [SEAL.]
ELIZA A. HAMMOND. [SEAL.]

Signed, sealed, and delivered, in the presence of JAMES H. PECK,
GOUNT ANDERSON.

STATE OF MISSOURI,
County of St. Louis, sct.

This day personally appeared before me, the Deputy Clerk of the Circuit Court within and for the county of St. Louis, the within named Samuel Hammond and Eliza his wife, and severally acknowledged the within deed or instrument of writing to be their and each of their hands and seals, acts and deeds, for the purpose therein mentioned. And the said Eliza Hammond, wife of the Samuel, being by me made acquainted with the contents of said deed, and examined separately and apart from her said husband, acknowledged that she signed the same freely and voluntarily, and without the compulsion or undue influence of her said husband.

Given under my hand and seal of my office, this 2d day of March, in the year of our Lord one thousand eight hundred and nineteen, and of our independence the forty-fourth.

JOHN C. LONG, *D. Clerk.*
For ARCHIBALD GAINBLE, *Clerk.*

Territory of Missouri, sct.

Be it known, that on the day of the date hereof, before Joseph V. Gainer, a notary public of the Territory aforesaid, duly commissioned, residing in the town of St. Louis, personally appeared Samuel Hammond, his wife, who acknowledged the within deed or instrument of writing to be their act and deed for the purpose therein mentioned.

And the said Eliza Hammond, wife of said Samuel Hammond, being by me examined separately and apart from her said husband, doth make her free and voluntarily acknowledgment that she is well acquainted with the contents of the said deed, and hath executed the same free from the compulsion or under influence of the said husband.

In testimony whereof, I have hereunto set my hand and affixed my notarial seal, at St. Louis aforesaid, this eighteenth day of March, in the year A. D. 1820. [L. S.] J. P. GARNIM, *N. P.*

TERRITORY OF ARKANSAS,
County of Clark, ss.

Be it remembered, that on the 19th day of May, A. D. 1820, the within deed was filed for record, and is duly recorded in book A,

folio 47, 48, 49, 50. Given under my hand and private seal (there being no public seal), at office, the day and year above written.

[SEAL.] DAVID McCORMICK, *Dep. Clerk.*
For WILLIAM P. S. BLAIR, *C. C. C. C. C.*

STATE OF ARKANSAS,
County of Hot Springs, ss.

I, Ira A. Sabine, Clerk of the Circuit Court and ex-officio Recorder for the county aforesaid, do hereby certify that the annexed and foregoing instrument of writing was filed for record in my office, on the 12th day of March, A. D. 1838, and the same is now duly recorded in record book A, pages 99 and 100.

In testimony whereof, I have hereunto set my hand and affixed the seal of my office, at Hot Springs, this 12th day of March, in the year of our Lord one thousand eight hundred and thirty-eight, and of the independence of the United States the sixty-second year.

[L. S.] IRA A. SABINE, *Clerk and ex-officio Recorder.*

Filed for record in my office, the 12th day of March, 1838.
IRA A. SABINE, *Clerk and ex-officio Recorder.*

Louisville, 6th June, 1838.

We hereby certify that the within deed from S. Hammond and Eliza A. Hammond, to Elias Rector, and the four office certificates with seals, together with the endorsement and minutes made thereon by the clerks, and truly copied from a deed purporting to be the original, and that we have carefully examined and compared the same. Given under our hands the date above.

THOMAS JOYES,
G. W. BARCLAY,
R. V. SCOTT.

No. 435. "*D.*"

Office of the Recorder of Land Titles, St. Louis, Missouri, June 16th, 1838.

I certify that in pursuance of the act of Congress passed the 17th day of February, 1815, a location certificate, No. 467, issued from this office in favor of Francis Langlois, or his legal representatives, for two hundred arpents of land, that a location has been made, as appears by the plat of survey herewith, and that the said Francis Langlois, or his legal representatives, is entitled to a patent for the said tract, containing according to said location, one hundred and seventy acres and fifteen-hundredths of an acre, situated in the State of Arkansas, as the township and range not mentioned.

Survey No. 2903. F. R. CONWAY,
U. S. Recorder of Land Titles in the State of Missouri.

To the Commissioner of the Gen'l Land Office at Washington.

Gen'l William Rector, Surveyor of the Public Lands for the State of Illinois, and Territory of Missouri.

The undersigned applies for the entry or donation of two hundred

arpents of land to satisfy a certificate issued by Frederick Bates, Esq., Recorder of Land Titles for the Territory of Missouri, to Francis Langlois, or his legal representatives, dated the 26th November, 1818, and numbered 467, to be surveyed in a square tract, the lines of which to be corresponding with the cardinal points, and to include the Hot Springs (so called) upon the waters of the Washita River, south of the River Arkansas, the said springs to be as near the centre of the square as circumstances will admit: an order of surveyor is solicited, and directions agreeably to this notice. The springs so to be included are those generally known as the largest and most resorted to upon the river.

St. Louis, 27th Jan'y, 1819. S. HAMMOND,
ELIAS RECTOR.

(For plat see original, page 165.)

Certificate No. 467. Var. 8° 45″ east. Survey No. 290.3.

Surveyed for Francis Langlois, or his legal representatives, who claims location by virtue of certificate No. 467, issued by Frederick Bates, Recorder of Land Titles, on the 26th of Nov. 1818, two hundred arpents, equal to one hundred and seventy and fifteen-hundredths acres of land, beginning at the main hot spring of Arkansas; thence south 45 degrees east, on an unmarked line 29.17 chs., where set a post the southeast corner of said survey, from which a pine 24 inches diameter bears north 7 E. 40 links, and a pine 16 inches diameter bears north 67 west 53 links, each marked P. S. & B. T.; thence north with the line of the survey, at 204 links, a white oak 13 inches diameter; at 41.25 chs. set a post the north corner of said survey, from which a pine 16 ins. diameter bears north 42 east 15 links, and a black oak 8 inches diameter, bears south 68° west 15 links, each marked P. S. & B. T.; thence west at 355 links, a white oak 24 inches diameter; at 41.25 inches set a post the northwest corner of said survey, from which a white oak 16 inches diamer. bears N. 10° E. 48 links, and a white oak 18 diameter bears south 58° E. 56 links, each marked P. S. & B. T.; thence south at 60 links, a white oak at 12.10 inches; Hot Spring Creek bears east at 41.25 inches; set a post the southwest corner of said survey, from which a block 6 inches diameter bears north 48° 21 links, and a black oak 10 inches diameter bears north 28° west 20 links; thence east at 563 links, a black oak 12 inches diameter at 18.87 inches; Hot Spring Creek bears south at 41.25 chs., the southeast corner of said survey.

In conformity with instructions from the Surveyor General, I have surveyed the foregoing location or claim in the name of Francis Langlois, so that the main hot spring is in the centre thereof.

28th February, 1838. JNO. C. HALE, *D. S.*

SURVEYOR'S OFFICE, *Little Rock, Ark., 23d Ap.*, 1838.

The foregoing writing is a true copy of the location, plat, and survey of two hundred arpents of land, by virtue of certificate No.

467 on file in this office, the survey of which has been examined and approved.

EWD. CROSS, *Sur. Pub. Lands.*

To F. R. CONWAY,
U. S. Recorder of Land Titles, St. Louis, Missouri.

RECORDER'S OFFICE, ST. LOUIS, MO., 16*th June*, 1838.

The foregoing is truly recorded on pages 42 and 43 of book G of records in this place. The number of survey was obtained by me from the surveyor's office at St. Louis and inserted.

F. R. CONWAY,
U. S. Recorder of Land Titles in the State of Missouri.

I, James Shields, Commissioner of the General Land Office, do hereby certify that the foregoing, on pages 1, 2, 3, and 4, are true copies of the papers on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of said office to be affixed, at the city of Washington, the 2d day of July, 1845.

JAMES SHIELDS, *Commissioner.*

(For plat see original, page 168.)

"*E.*"

Survey No. 2903. Certificate No. 467.

Survey for Francis Langlois or his legal representatives, two hundred arpents of land, located by virtue of a New Madrid certificate. Beginning at a post from which a pine 10 inches in diameter, marked thus, H. & R., bears south 47° E. 8 links. Thence south 7 chs. a creek 15 links wide runs east; at 41.25 links set a post from which a pine 15 inches in diameter bears N. 47° E. 23 links; thence E. 19.25 chs. to Hot Spring Creek, 25 links wide, runs south at 41.25 links set a post from which a post oak 10 inches in diameter bears south 84° E. 66 links; thence north at 41.25 inches set post from which a red oak 6 inches in diameter bears S. 62 W. 16 links; thence west 41.25 links to the beginning.

JAMES S. CONWAY,
July 16, 1820. *D. Surveyor.*

Endorsement on said Bill.

No. 12. Bill of Complaint of
HENRY M. RECTOR
vs.
FRANCIS LANGLOIS, JOSEPH STORY, SAMUEL and ELIZA A. HAMMOND, Defendants, &c.

Filed on this 21st day of July, A. D. 1852.

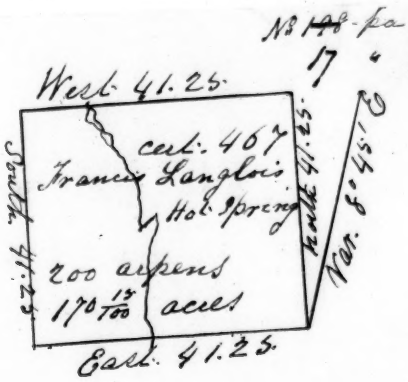
JOHN JESTER, *Clerk.*

This day personally appeared before me, an acting Justice of the Peace in and for the County of Hot Springs, State of Arkansas, Alfred Trigg, to me well known, and makes oath that to the best

Sketch Plan for Lease

Plan

No ~~148~~ fa ~~166~~
17 " 76.



of his knowledge and belief certain persons named as defendants in a bill in chancery filed by Henry M. Rector, complainant in the Hot Springs Circuit Court, to wit, Francis Langlois, Joseph Story, Samuel Hammond, and Eliza A. Hammond, and their heirs, if they be deceased, are non-residents of this State of Arkansas.

As witness my hand and seal this 21st day of July, A. D. 1852.

FRANS. A. WARD.

STATE OF ARKANSAS,
County of Hot Springs.

In the Circuit Court of said county, in chancery, before the clerk of said Court in vacation, 21st day of July, A. D. 1852.

Bill for a Decree of Title against the Defendants.

HENRY M. RECTOR, Complainant,
vs.
FRANCIS LANGLOIS, SAMUEL HAMMOND, ELIZA A. HAMMOND, wife of said SAMUEL, or their HEIRS, if they be deceased, Defendants.

This day the said complainant files his bill in chancery against the said defendants, and also files the affidavit of Alfred Trigg, stating that Francis Langlois, Joseph Story, Samuel Hammond, Eliza A. Hammond, wife of the said Samuel, and their heirs, if they be deceased, are now non-residents of this State (see page 161), and it appearing that this is a suit instituted against the defendants for a decree of title to certain real estate in said County of Hot Springs, State aforesaid: It is therefore ordered that the said Francis Langlois, Joseph Story, Samuel Hammond, Eliza A. Hammond, wife of said Samuel, or their heirs, if they be deceased, be notified of the filing and the pendency of the complainant's bill against them in their behalf by publication in some newspaper printed in this State, for the number of times and within the time prescribed by law, and that they be and appear before the Judge of the Circuit Court of Hot Spring County, in the State of Arkansas, sitting in chancery, at the term of the Circuit Court to be begun and held on the last Monday in August next, at the court in and for the said County of Hot Springs, then and there to plead, answer, or demur to the bill of complaint by said complainant this behalf presented and filed; otherwise the same, together with the matters and things therein contained, will be taken as confessed by them, and a decree entered according to the prayer thereof.

STATE OF ARKANSAS,
County of Pulaski.

Be it remembered, that on this day personally appeared before me, J. J. Thompson, an acting duly commissioned justice of the peace in and for the township of Big Rock, in the county aforesaid, the undersigned, Wm. E. Woodruff, printer and publisher of the "Arkansas State Gazette and Democrat," a newspaper published in the city of Little Rock and county aforesaid, who, being duly sworn,

deposeth and saith, that an order of the Circuit Court of Hot Springs County, in the case of Henry M. Rector *vs.* Francis Langlois and others (a correct printed copy of which is hereto annexed), has been regularly published in said newspaper for two weeks in succession, the first insertion of which was on the 23d July, 1852, and the last on the 30th July, 1852. W. E. WOODRUFF.

Sworn to and subscribed, this 30th day of July, 1852, before me,
JOHN J. THOMPSON.

THE STATE OF ARKANSAS,
County of Hot Springs.

At a Circuit Court in chancery, begun and holden in and for the County of Hot Springs, in the State of Arkansas, at the court-house in the town of Rockport, on the last Monday of August, in the year of our Lord one thousand eight hundred and fifty-two, being the thirtieth day of said month: Present and presiding the Honorable Shelton Watson, Judge of the Sixth Judicial Circuit of said State, who holds this Court pursuant to arrangement with the Hon. John C. Murray, Judge of the Second Judicial Circuit of said State, chancellor:

Pleas before the Hon. Shelton Watson, on Wednesday, September 1st, 1852, it being a subsequent day of said term:

HENRY M. RECTOR
vs.
FRANCIS LANGLOIS, JOSEPH STORY, and others:

Comes said complainants: and it appearing to the satisfaction of the Court from the order of publication and affidavit thereto annexed, filed herein at a prior day of this term, which order and affidavit are of file and ordered to remain and constitute part of the record herein, that said defendants are non-residents of the State, have been duly notified of the institution, pendency, and object of this suit by publication of the said order, for the time, in the manner, and for the number of times prescribed by law, and that said defendants have wholly failed to appear, plead, or demur to the said bill: It is therefore considered, and ordered, adjudged and decreed by the Court here, that the said bill and all the matters and allegations thereof be and the same is hereby taken as true and confessed as against the said defendants.

And it is further considered and ordered, adjudged and decreed, that all title and interest, estate, claim, or demand in law or equity of the said defendants, or any of them, in and to the said New Madrid certificate, and the lands selected and located in virtue thereof, do pass to and vest in the said complainant, his heirs and assigns forever, and that the said defendants pay said complainants the costs of this suit.

And is further considered and ordered, that unless the said defendants appear herein on or before the fourth day of the next term

of this Court, and then there show cause for not before appearing and plead, answer, or demur to the said bill, this decree shall become final and absolute, and then a full and complete decree will be herein entered, conveying fully into effect the objects of said bill in conformity to the prayer thereof; and this case stands continued, &c.

Proceedings had on Thursday, September second, 1852, it being a subsequent day of said term.

HENRY M. RECTOR, Complainant,

vs.

FRANCIS LANGLOIS, JOSEPH STORY, SAMUEL HAMMOND, and ELIZA A. HAMMOND, his wife, Defendants.

12. In chancery.

Come the complainants by solicitor, and on leave asked and obtained files the authenticated copy of the order and publication herein.

STATE OF ARKANSAS,

County of Hot Springs.

In the Circuit Court of said county, before the said Clerk of said Court in vacation, 21st day of July, A. D. 1853.

Bill for a Decree of Title against the Defendants.

HENRY M. RECTOR, Complainant,

vs.

FRANCIS LANGLOIS, JOSEPH STORY, SAMUEL HAMMOND, ELIZA A. HAMMOND, wife of said Samuel, or their unknown heirs if the be deceased, Defendants.

This day the said complainant files his bill in chancery against the said defendant, and also files the affidavit of Alfred Trigg, stating that Francis Langlois, Joseph Story, Samuel Hammond, Eliza A. Hammond, wife of said Samuel, and their heirs if the be deceased, are non-residents of this State; and this appearing that this is a suit instituted against the defendants for a decree of title to certain real estate in said County of Hot Springs, State aforesaid, it is therefore ordered that said Francis Langlois, Joseph Story, Samuel Hammond, Eliza A. Hammond, wife of the said Samuel, or their heirs if they be deceased, be notified of the filing and pendency of complainant's bill against them by publication of this order in some newspaper printed in this State, for the number of times and within the time prescribed by law in this behalf, and that they be and appear before the Judge of the Circuit Court of Hot Springs County, in the State of Arkansas, sitting in chancery, at the term of the Circuit Court to be begun and held on the last Monday of August next, at the court-house in and for the said County of Hot Springs, then and there to plead, answer, or demur to the bill of complainant by said complaint in this behalf presented and filed, otherwise the same,

together with the matters and things therein contained, will be taken as confessed by them, and a decree entered according to the prayer thereof.

JOHN JESTER, *Clerk.*

A true copy from the record. JOHN JESTER, *Clerk.*
July 22d, 1852.

STATE OF ARKANSAS,
County of Pulaski.

Be it remembered, that on this day personally appeared before J. J. Thompson, an acting and duly commissioned justice of the peace in and for the township of Big Rock, in the county aforesaid, the undersigned, Wm. E. Woodruff, printer and publisher of the "Arkansas State Gazette and Democrat," a newspaper published in the City of Little Rock, and county aforesaid, who being duly sworn deposeth and saith, that an order of the Circuit Court of Hot Springs County, in the case of Henry M. Rector *vs.* Francis Langlois and others (a correct printed copy of which is hereto annexed), has been regularly published in said newspaper for two weeks in succession, the first insertion of which was on the 23d July, 1852, and the last on the 30th July, 1852. WM. E. WOODRUFF.

Sworn to and subscribed, this 30th day of July, 1852, before me,
JOHN J. THOMPSON.

Endorsed as follows: Filed Sept. 1, 1852.
JOHN JESTER, *Clerk.*
By JNO. P. EMERSON, *Dp. Clerk.*

And it appeared that the defendants and each of them have failed to enter their appearance herein, it is by the Court ordered, adjudged and decreed that the complainant's said bill of complaint, and the matters therein contained, be taken as true and confessed against said defendants.

THE STATE OF ARKANSAS,
County of Hot Springs.

On the last Monday of February, in the year of our Lord one thousand eight hundred and fifty-three, being the time required by law for the Circuit Court in chancery of the County of Hot Springs, in the State of Arkansas, to be holden at the court house in the town of Rockport, the Judge of said Court failed to attend, and the Court stands adjourned until to-morrow.

JNO. P. EMERSON, *Clerk.*

Tuesday, March first, A. D. one thousand eight hundred and fifty-three, the Court met at the court house in the town of Rockport, in the County of Hot Springs, in the State of Arkansas:

Present, the Honorable Jno. C. Murray, Judge of the Second Judicial Circuit of said State, Chancellor, presiding.

Proceedings had before the Hon. J. C. Murray, on Wednesday, March the second, 1853, it being a subsequent day of said term.

HENRY M. RECTOR

12. vs.

FRANCIS LANGLOIS, JOSEPH STORY and SAMUEL HAMMOND and his wife, ELIZA A. HAMMOND.

Comes the complainant, and it appearing to the Court that the defendants had been regularly notified of the pendency and objects of this suit by publication in the manner and for the time prescribed by law, prior to the last term of this Court, a copy of which order and affidavit of such publication is of record herein, which is ordered to constituted part of the proceedings and remain of record herein, and at the last term of this Court, said defendants wholly to appear and plead herein. Whereupon at said term the said bill and the obligation thereof were ordered and decreed to be taken as true and confessed as against said defendants: and said defendants having still wholly failed to appear or plead herein, or to show any cause whatever against a final decree herein; and it is now appearing to the Court here that said Francis Langlois by virtue of the act of Congress of the 17th February, 1815, for the relief of the inhabitants of the late County of New Madrid, in the (then) Territory of Missouri, was entitled to two hundred arpents of land, and to locate the same in conformity to said act of Congress, and in evidence of such right of said Francis, about the 26th Nov., 1818, Frederick Bates, recorder of land titles for the Territory of Missouri, in conformity to said act of Congress, issued to said Francis a location certificate, commonly called a New Madrid certificate, giving the right to said Francis and his legal representatives to locate or enter by virtue thereof, with the principal deputy surveyor for the Territory of Missouri, said two hundred arpents of land on any of the public lands in said Territory, the sale of which was authorized by law, which right of location and certificate, by his deed about the 10th November, 1818, said Francis Langloise empowered and authorized said Story, with full power of substitution to sell and convey said right and certificate absolutely, and select and locate the lands in virtue thereof. And said Story about the 24th day of February, A. D. 1820, by his deed, granted, bargained and sold said certificate and right of entry to said Samuel Hammond and Elias Rector, with covenants of warranty, and said Samuel Hammond and Eliza Hammond, his wife, by their deed dated 19th February, A. D. 1819, granted, bargained and sold unto said Elias Rector, his wife and assigns forever, in fee simple, the said certificate and right of entry, and the lands selected and located in virtue thereof as next mentioned, with covenants of warranty. That said Hammond and Rector, while owners of said claim, in pursuance of said act of Congress, A. D. 1819, by application and notice addressed to General William Rector, Surveyor General of Illinois, and Territory of Mis-

souri, located said New Madrid certificate upon, and selected the Hot Springs, on the waters of the Ouachita River, now in the State of Arkansas, including said Hot Springs, the exterior lines of which location to run to the cardinal points, and to be surveyed in a square tract, which said Hot Springs now lie in said county of Hot Springs; and in accordance with said notice of location, the boundary lines of said lands and survey well marked and surveyed, and the corner thereof established about the 16th day of July, A. D. 1820, by James S. Conway, deputy surveyor under said William Rector aforesaid, which survey, field notes thereof, and plats, were duly returned to said file in the office of the Surveyor General aforesaid in duplicate. That afterwards, about the 28th day of February, 1838, one John C. Hale, deputy surveyor of the United States, by order of Ewd. Cross, Surveyor General of the United States for the State of Arkansas, made a re-survey of said location of said Madrid certificate on said springs, and returned the plat and field notes thereof to said Surveyor General's Office, which survey, so made by said Hale as such deputy surveyor, contains, as granted by said act of Congress, and as stated in said certificate by said Frederick Bates, dated 26th Nov., 1818, No. 467, two hundred arpents, equal to one hundred and seventy and fifteen-hundredths acres of land, and described and identified the land as follows, the variation of the compass being 8° 45″ east, to wit:—

Beginning at the main Hot Springs of Arkansas; thence south 45° east on an unmarked line 29.17 chains, where was set a post the southeast corner of said survey, from which a pine 24 inches diameter bears north 7° east 40 links, and a pine 16 inches diameter bearing north 67° west 53 links, each marked P. S. and B. T.; thence north with the line of the survey at 204 links a white oak 13 inches diameter at 41.25 chains to a post the northeast corner of said survey, from which a pine 16 inches diameter bears north 42° east 15 links, and a black oak 8 inches diameter, bears south 68° west 15 links, and each marked P. S. and B. T.; thence west at 355 links a white oak 24 inches diameter, at 41.25 chains, to a post set the northwest corner of said survey, from which a white oak 16 inches diameter bears north 10° east 48 links, and a white oak 18 inches diameter bears south 58° east 56 links, each marked P. S. and B. T.; thence south at 60 links a white oak at 12.10 chains Hot Springs Creek bears east at 41.25 chains to a post the southwest corner of said survey, from which a black oak, 6 inches diameter, bears north 48° east 21 links, and a black oak 10 inches in diameter bears north 28° west 20 links; thence east at 563 links a black oak 12 inches diameter, at 18.87 chains Hot Springs Creek bears south at 41.25 chains the southeast corner of said survey, the main hot springs being in the centre thereof, which survey, numbered 2903, plat, map and field notes were transmitted to the recorder of land titles at St. Louis, Missouri, who was then Frederick R. Conway, that the patent thereof might issue according to law, with which

were also transmitted the notice of selections and locations on said Hot Springs by said Hammond & Rector, &c. &c.

Whereupon said Frederick R. Conway, in conformity to law, issued a patent certificate upon and in conformity to said survey, to and in favor of said Langlois, or his representatives, establishing and evidencing their right to said lands so surveyed and selected, to the end that patent from the government of the United States might issue, which patent, however, never has issued; that said complainant is sole heir of Elias Rector, and is now entitled to the absolute fee in and to the said lands, and to a conveyance thereof in absolute fee from said defendants, and to have vested in him and heirs forever all and every right of said defendants, and every of them, and to said right and certificate and lands, and have his title quitted and forever settled in respect thereto as against said defendants, and those claiming under them or any of them. It is therefore considered, ordered, and adjudged and decreed by the Court here that the said Francis Langlois, Joseph Story, and Samuel Hammond, and Eliza his wife, and each of them separately, do make, seal, and deliver a deed or deeds in absolute fee to the said complainant, his heirs and assigns forever, for all their right, interest, and estate of each and every of them in and to the said right under the said act of Congress, and the said certificate, and the lands so surveyed and selected as aforesaid, including said Hot Springs, and that the absolute right and title in fee to said right, certificate, location, and the aforesaid lands be, and the same is hereby divested out of said defendants, and each and every of them, and those holding under them, or any of them, and transferred to and vested in the said complainant, his heirs and assigns forever, and the title of said complainant, his heirs and assigns, be and the same is hereby finally declared and established, and perpetually quitted and settled as to the said defendants, and each of and every of them.

And it is further decreed that said defendants pay the costs of this suit, &c.

HENRY M. RECTOR

12 vs.

FRANCIS LANGLOIS, JOSEPH STORY and SAMUEL HAMMOND, and his wife, ELIZA HAMMOND.

Come the complainant, and it appearing to the Court that the defendants had been regularly notified of the pendency and object of this suit by publication in the manner and time prescribed by law, prior to the last term of this Court, a copy of which order and affidavit of such publication is of record herein, which is ordered to constitute part of the proceeding and remain of record herein, and that at the last term of this Court said defendants wholly failed to appear and plead herein. Whereupon at said term the said bill and the allegation thereof were ordered and decreed to be taken as true and confessed as against said defendant, having still wholly failed to

appear or plead herein, or to show any cause whatever against a final decree herein. And it appearing to the Court here the said Francis Langloise, by virtue of the act of Congress of the 17th February, 1815, for the relief of the inhabitants of the late county of New Madrid, in the then Territory of Missouri, was entitled to two hundred arpents of land, and to locate the same in conformity to said act of Congress, and in evidence of such right of said Francis, about the 26th of November, 1818, Fredrick Bates, Recorder of Land Titles for the Territory of Missouri, in conformity to said act of Congress, issued to said Francis a location certificate, commonly called a New Madrid certificate, giving the right to said Francis and his legal representatives to locate or enter by virtue thereof, with the principal Deputy Surveyor for the Territory of Missouri, said two hundred arpents of land on any of the public lands in said Territory, the sale of which was authorized by law, which right of location and certificate by his deed dated about the 10th of November, 1818, and Francis Langlois empowered and authorized said Joseph Story, with full power of substitution to sell and convey said right and certificate absolutely, and select and locate the lands in virtue thereof. And said Story, about 24th day of February, A. D. 1820, by his deed, granted, bargained, and sold said certificate and right of entry, to said Samuel Hammond and Elias Rector, with covenants of warranty, and said Samuel Hammond and Eliza Hammond, his wife, by their deed dated the nineteenth of February, 1819, granted, bargained, and sold unto said Elias Rector, his heirs and assigns forever, in fee-simple, of the said certificate and right of entree, and the land so selected and located in virtue thereof as next mentioned, with covenant of warranty. That said Hammond and Rector, while owners of said claim, in pursuance of said act of Congress, A. D. 1819, by application and notice addressed to General William Rector, Surveyor Gneneral of Illinois, and Territory of Missouri, located said New Madrid certificate upon, and selected the Hot Springs, on the waters of the Ouachita River, now in the State of Arkansas, including said Hot Springs, the exterior lines of which location to run to the cardinal point, and to be surveyed in a square tract, which said Hot Springs now lie in said county of Hot Springs; and in accordance with said notice of location, the boundary lines of *said* and survey were marked and surveyed, and the corners thereof established about the sixteenth (16) day of July, 1820, by James S. Conway, Deputy Surveyor under said General William Rector aforesaid, which survey, field notes thereof, and plats, were duly returned to said file in the office of the Surveyor General aforesaid in duplicate. That afterwards, about the 28th day of February, 1838, one John C. Hale, Deputy Surveyor of the United States by order of Edw. Cross, Surveyor General of the United States for the State of Arkansas, made a re-survey of said location of said Madrid certificate on said springs, and returned the plate and field notes thereof to said Surveyor General's Office, which survey, so made by

said Hale as such deputy, contains, as granted said act of Congress, and as stated in said certificate by said Fredrick Bates, dated 26th Nov., 1818, No. 467, two hundred arpents, equal to one hundred and seventy and fifteen-hundredths acres of land, and described and identified the lands as follows, the variation of the compass being 8.45° east, to wit: Beginning at the Hot Springs of Arkansas; thence south 45° east, 45 east on an unmarked line 29.17 chains, where was set a post the southeast corner of said survey, from which a pine 24 inches diameter bears north 1° east 40 links, and *and* a pine 16 inches in diameter bearing north 67° west 59 links, each marked P. S. and B. T.; thence north with the line of survey at 204 links a white oak 13 inches diameter, at 41.25 chains to a post the northeast corner said survey, from which a pine 16 inches diameter bears north 42 east 15 links, and a black oak 8 inches diameter bears south 68° west 15 links, each marked P. S. and B. T. Thence west, at 355 links, a white oak, 24 inches in diameter, at 41.25 chains, to a post set the northwest corner of said survey, from which a white oak 16 inches diameter bears north 10° east 48 links, and a *which* oak 18 inches in diameter bears south 58° east 56 links, each marked P. S. & B. T.; thence south at 60 links, a white oak 12.10 chains, Hot Springs Creek bears east at 41.25 chains, to a post the southwest corner of said survey, from which a black oak 6 inches diameter bears north 48° west 21 links, and a black oak 10 inches in diameter bears north 28° west 20 links; thence east at 563 links, a black oak 12 inches diameter at 18.87 chains, Hot Spring Creek bears south at 41.25 chains, to the southwest corner of said survey, the main Hot Spring being in the centre thereof, which survey, numbered 29.03, plat, map, and field (notes) were transmitted to the recorder of land titles at Saint Louis, Missouri, who was then Fredrick R. Conway, that the patent therefor might issue according to law, with which were also transmitted the notice of selection and location on said Hot Springs by said Hammond and Rector, &c. Whereupon said Fredrick R. Conway, in conformity to law, issued a patent certificate upon and in conformity to said survey, to and in favor of said Langloise or representatives, establishing and evidencing their right to said land or survey, and selected to the end that patent from the government of the United States might issue, which however never has issued, that said complainant is sole heir of Elias Rector, and is now entitled to the absolute fee in and to the said land, and to a conveyance thereof, in absolute fee from said defendant, and to have vested in him and his heirs forever all and every right of said defendant and every of them, and to said right and certificate, and lands, and to leave his title quitted and forever settled in respect thereto, as against said defendant (*dependants*), and those claims under them or any of them.

It is therefore considered, ordered, and adjudged, and decreed by the Court here that the said Francis Langloise, Joseph Story, and Samuel Hammond, and Eliza, his wife, and each of them severally,

do make, seal, and deliver a deed or deeds in absolute fee to the said complainants, and his and assigns forever, for all their right, interest, and estate of each and every of them in and to the said right under the said act of Congress and said certificate, and the lands so surveyed and selected as aforesaid, including said Hot Springs, and that the absolute right and title in fee to said right, certificate, location, and the aforesaid land, be and the same is hereby divested out of said defendants, and each and every of them, and those holding under them, or any of them, and transferred to and vested in the said complainants, his heirs and assigns forever, and title of said complainants, his heirs and assigns, be and the same is hereby finally declared and established, and perpetually quitted and settled as to the said defendants, and each and every of them.

And it is further decreed that said defendants pay the cost of this suit, &c. &c.

STATE OF ARKANSAS,
County of Hot Spring.

I, John P. Emerson, Clerk of the Circuit Court in and for the county and State aforesaid, do hereby certify that the foregoing five pages contain a true, perfect, and correct transcript from the record in the foregoing cause.

In testimony whereof I have hereunto set my hand as such clerk, and affixed the seal of office thereto at Rockport on this 23d day of March, 1853. JNO. P. EMERSON, *Clerk.*
[L. S.]

STATE OF ARKANSAS,
County of Hot Springs.

I, Jno. P. Emerson, Clerk of the Circuit Court, and ex officio Recorder in and for the county and State aforesaid, do hereby certify that the foregoing instrument of writing was filed in my office for record on the 23d day of March, 1853, and is now duly recorded in Record D, on page 205, 206, 207, and 208, and 209.

In testimony whereof I have hereunto set my hand as such clerk, and affixed the seal of office thereto at Rockport on this 23d day of March, A. D. 1853. JNO. P. EMERSON,
[L. S.]
Clerk and ex-officio Recorder.

To the reception of which as testimony the plaintiff at the time excepted, and the Court sustained the objection, to which opinion of the Court in sustaining said objection and refusing to permit said papers to be read as testimony the defendant at the time excepted, and asked for time to prepare her bill of exception, which is granted her.

The defendant then produced from a bill of exception, taken at the last term of this Court in a certain case wherein William H. Gaines and Maria Gaines and others were plaintiffs, and Henry M. Rector and Wilson Stidham was defendant, what purports to be a transcript of a New Madrid location in favor of Francis Langlois,

with the surveys made in relation thereto, *decuiling* that she does so become, under the ruling of this Court made upon the application for a continuance in this case, she is compelled to do so, or forego all advantages arising from said outstanding title; and the plaintiffs at the same time declared that they consented that the copies offered should be taken for the originals, which transcript, surveys, &c., were in the words following, to wit:—

"No. 435.

OFFICE OF THE RECORDER OF LAND TITLES.
ST. LOUIS, MO., *June 16th*, 1838.

I certify that in pursuance of an act of Congress, passed the 17th day of February, 1815, a location certificate, No. 467, issued from this office in favor of Francis Langlois, or his legal representatives for two hundred arpents of land; that a location has been made, as appears by the plat of survey herewith, and that the said Francis Langlois, or his legal representatives, is entitled to a patent for the said tract, containing, according to said location, one hundred and seventy acres and fifteen-hundredths of an acre, situated in the State of Arkansas, the township and range not mentioned.

Survey No. 2903. F. R. CONWAY,
Recorder of L. Titles in the State of Missouri.

To the Commisr. of Gen'l Land Office, City of Washington:—

General William Rector, Surveyor, &c., of the public lands for the State of Illinois and Territory of Missouri, the undersigned applies for the entry or donation of two hundred arpents of land to satisfy a certificate issued by Fredrick Bates, Esq., Recorder of the Land Titles for the Territory of Missouri, to Francis Langlois, or his legal representatives, dated the 20th November, 1818, and numbered 467, to be surveyed in a square tract, the lines of which to be corresponding with the cardinal points, and to include the Hot Springs (so called) upon the waters of the Ouachita River, south of the river Arkansas, the said Springs to be as near the centre of the square as circumstances will admit, an order of survey is solicited and directions agreeable to this notice; the Springs so to be included are those generally known as the largest and most resorted to upon that river.

St. Louis, 27th July, 1819. S. HAMMOND,
ELIAS RECTOR.

(For plat see original, page 197.)

Certificate No. 467. *Var.* 8° 45″ *East. Survey No.* 2903.

Surveyed for Francis Langlois, or his legal representatives, who claims location by virtue of certificate No. 467, issued by Fredrick Bates, Recorder of Land Titles, on the 26th November, 1818, two hundred arpents equal to one hundred and seventy acres and fifteen-hundredths acres of land, beginning at the main Hot Spring of Arkansas, thence S. 45 E., on an unmarked line 29.17 chains, where

set a post the southeast corner of said survey from which a pine 24 in. diameter, bears N. 7° E. 40 links, and a pine 16 inches diameter bears *N.* 7° *E.* 40 *links, and a pine* 16 *inches diameter bears* N. 67° W. 53 links eached marked P. S. & B. T.; thence north (with line of survey) at 204 links a white oak 13 inches dia., at 41.25 chs. set a post the northeast corner of said survey, from a pine 15 ins. dia. bears north 45° E. *east* 13 links, and a black oak 8 inch dia. bears S. 68 W. 15 links, each marked P. S. & B. T.; thence W. at 355 links a white oak 24 ins. dia.; at 41.25 chs. set a post the northwest corner of said survey, from which a white 16 ins. dia. bears N. 10° E. 48 links, and a white oak 18 inches dia. bears S. 8° E. 58 links, each marked P. S. & B. T.; thence south at 60 links a white oak, at S. 2.10 chs. Hot Springs Creek bears east; at 41.25 chains set a post the southwest corner of said survey, from which a black oak 6 ins. dia. bears N. 48 E. 25 links, and a black oak 10 in. dia. bears N. 28° W. 30 links; thence E. at 563 links a black oak 12 ins. dia.; at 18.87 chs. Hot Spring Creek bears south; at 41.25 chs. the southeast corner of said survey.

In conformity with the instructions from the Surveyor-General, I have surveyed the foregoing location, the name of Francis Langlois, so that the main Hot Springs in on the centre thereof.

28th Febr'y, 1838. JOHN C. HALE, *D. S.*

SURVEYOR'S OFFICE, *Little Rock*, 23*d April*, 1838.

The foregoing writing is a true copy of the location, plat, and survey of two hundred arpents of land, by virtue of certificate No. 467, on file in this office, the survey of which has been examined and approved. EDW. CROSS, *Sur. Pub. Lands.*

To FREDERIC R. CONWAY,
U. S. Recorder of Land Titles, St. Louis, Missouri.

RECORDER'S OFFICE, *St. Louis, Missouri*, 16*th June*, 1838.

The foregoing is truly recorded on pages 42 and 43 of book G of record in this office. The number of survey was obtained by and from the surveyor's office at St. Louis, and inserted.

F. R. CONWAY,
U. S. Recorder of Land Titles in the State of Missouri.

GENERAL LAND OFFICE.

I, James Shields, Commissioner of the General Land Office, do hereby certify that the foregoing, on pages 123 and 4, are true copies of the papers on file in this office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of said office to be affixed, at the city of Washington, the second day of July, A. D. 1843.

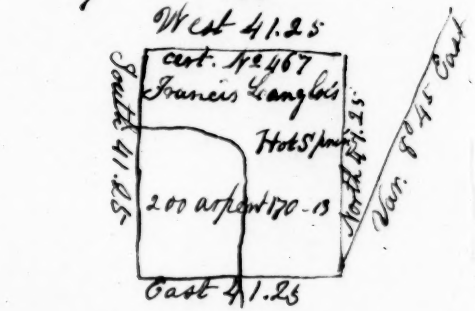
[L. S.] JAS. SHIELDS, *Commissioner.*

(For plat, see original, page 200.)

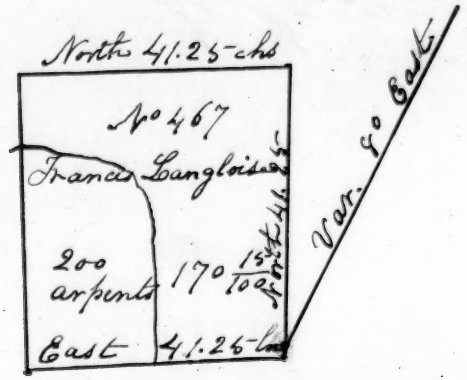
Survey No. 2,903. *Certificate No.* 467.

Surveyed for Francis Langlois, or his legal representatives, 200

Nº 148 – page ~~147~~ 89



No 198 — page 200
17 89



arpents of land, located by virtue of New Madrid certificate, beginning at a post from which a pine 10 inches in diameter, marked thus—H. & R., bears S. 47° E. 8 links; thence south 7 chs., a creek 15 links wide bears east; at 41.25 chs. set a post, which a pine 15 inches in diameter bears N. 47½ E. 23 links; thence east 19 inches 25 links to *to* Hot Spring Creek, 25 links wide, runs south; at 41 chs. 25 links set a post, from which a post oak 10 inches in diameter bears south 84° E. 6 links; thence south at 41 chs. 25 links set a post, from which a *white* a red oak 6 inches in diameter bears S. 62 W. 16 links; thence west 47 chs. 25 links to the beginning.

July 16, 1820. JAS. S. CONWAY, *D. S.*

Township 2 *South of Range* 19 *West.*

(For plat, see original, page 201.)

SURVEYOR'S OFFICE, *Little Rock, Ark.*, 25 *January*, A. D. 1855.

I certify that the above plat or diagram of Sections 32 and 33, Township 2 S., R. 19 W., is a true copy from the original plat on file in this office. H. M. RECTOR, *Surveyor Gen'l.*

JNO. SKULL, *Chief Clerk.*

Field-notes for line between Sections 32 *and* 33, *Town.* 2 *S., R.* 19 *West.*

Copied from the regular field-notes.

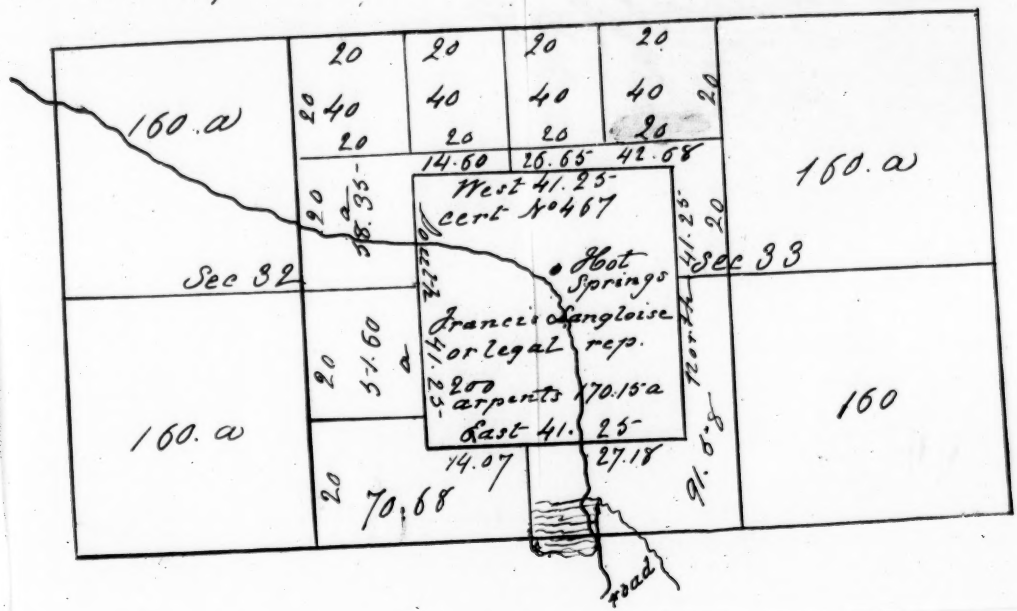
North between sections 32 and 33, T. 2 S., R. 19 west, T. O. S. A black oak 16 inch. dia.; 13.38 private survey of Francis Langlois; set a post 14.07 east of the southwest corner to said private survey, cor. to sec. 32 and 33, from *under* a white-oak 20 ins. dia. bear S. 37 E. 68 links, a gum 12 ins. dia. bears S. 27 W. 23 links, 34.00 at a point due west of the main Hot Springs and 7.20 therefrom, 34.67 intersected the north boundary of survey of Francis Langlois, 14.60 east of the northwest corner of said survey set a post, corner to said section 32 and 33, from which a pine 14 ins. dia. bears N. 17 W. 12 links, a pine 16 ins. dia. bears N. 27 E. 31 links, 80.00 N. set a post, corner to sections 32, 33, 28 and 29.

Certificate No. 467.

Copied from the book for recording the surveys of land titles.

Surveyed for Francis Langlois, or his legal representatives, who claims location by virtue of certificate No. 467, issued by Fredrick Bates, Recorder of Land titles, on the 26th Nov., 1818, two hundred arpents, equal to one hundred and seventeen and fifteen-hundredths acres of land, beginning at the main Hot Springs of Arkansas, thence S. 45° E. on an unmarked line 29.17 chains, where set a post, the southeast corner of said survey, from which a pine 24 ins. dia. bears N. 67° W. 53 links, each marked P. S. & B. T.; thence north with the line of survey, at 204 chs. a white oak 13 inches dia., 41.25 chs. set a post, the northeast corner of said survey, from which a pine 16 ins.

Township 2 South of Range 19 West



dia. bears N. 45° E. 14 links, and a black-oak 8 ins. dia. bears S. 68 W. 15 links, each marked P. S. & B. T.; thence west, at 355 links a white-oak 24 ins. dia., at 41.25 chs., set a post, the northwest corner of said survey, from which a white-oak 16 ins. dia. bears N. 10° E. 48 links, and a white-oak 18 ins. dia. bears S. 58° E. 56 links, each marked P. S. & B. T.; thence south, at 60 links a white-oak, at 12.10 chains Hot Spring Creek bears east, at 41.25 chs. set a post, the southwest corner of said survey, from which a black-oak 6 inches in dia. bears N. 48 E. 21 links, and a black-oak 10 ins. diameter, bears N. 28 W. 50 links; thence east, at 563 links a black oak 12 ins. dia., at 18.87 chs. Hot Spring Creek bears south, at 41.25, the southeast corner of said survey.

In conformity with instructions from the surveyor-general, I have surveyed the foregoing location and claim in the name of Francois Langlois, so that the main Hot Spring is in the centre thereof.

28th February, 1838. JNO. C. HALE, *D. S.*

To the reception of which claim, survey, &c., as evidence the plaintiffs (consenting they should have the same force and right as the originals) objected, and the Court sustained the objected, to which opinion and judgment of the Court, in sustaining said objection, and refusing to permit said papers to go to the jury as evidence, the defendant at the time excepted, and asked for time to prepare his bill of exceptions, which was granted.

The defendant produced a deed between Henry M. Rector and John C. Hale, affecting the property in controversy, and filed an affidavit of John C. Hale, in the words and figures following, to wit:—

STATE OF ARKANSAS,
County of Hot Spring.

I, John C. Hale, do solemnly swear, that the deed executed in duplicate between Henry M. Rector and John C. Hale, on the 11th day of June, 1843, the acknowledgment thereto was never attended and signed by the magistrate taking the same on any but one of said duplicate, which was delivered to Henry M. Rector, and is now under his control and in his custody, and affiant is unable to produce the same from the said Henry M. Rector, and did not know until after the commencement of this trial that there was any objection to his duplicate, and the subscribing witnesses are absent. So help me God. J. C. HALE.

Sworn to before me, this 28th Feb., 1856.

JNO. P. EMERSON, *Clerk.*

And said defendant also offered to prove by a witness other than the subscribing witnesses, that said witness saw said deed signed, and also that said witness had seen the grantor in said deed write, and that the signature were genuine, to which proof the plaintiffs objected, and the Court sustained the objection; to which opinion and judg-

ment, in refusing to permit said proof to be made, the defendant at the time excepted, and asked for time to prepare her bill of exceptions, which was granted.

Whereupon the defendant produced a certified copy of the recorder's deed and certificate, and offered the same as evidence, which deed and certificate were in the words and figures following, to wit:—

This article of agreement, and bargain, and sale, entered *to* this seventeenth day of *of* May, A. D. eighteen hundred and forty-three, at the Hot Springs, and State of Arkansas, by and between Henry M. Rector, of the city of Little Rock, of the first part, and Jno. C. Hale, of Hot Springs, and State aforesaid, of the second part,

Witnesseth, that whereas the parties here contracting are respectively interested in claims to the Hot Springs, the said Rector, by virtue of a New Madrid location, upon a covenant issued by Fredrick Bates, Recorder of land titles for the Territory of Missouri, to Francis Langlois, which said certificate was many years since located on said Hot Springs, as the U. S. plat will fully show.

And the interest of said Hale is *desired* from a purchase, or article of agreement, entered into by and between David and Sarah Percifull, of the first part, and Hale and Woods, of the other part, which article of agreement bears date of the 16th of November, A. D. eighteen hundred and forty.

Now, therefore, the aforesaid Henry M. Rector by these presents conveys to the said John C. Hale, his heirs and assigns, an undivided fourth part of his, the said Rector's, interest to the Hot Springs, or to the New Madrid claim aforesaid, for and in consideration of the one half of the said Jno. C. Hale's interest, acquired as above stated, to the west half of section thirty-three, in township (2) two, south of range nineteen, west of the fifth principal meridian.

To have and to hold every part of the privileges and advantages, rents and profits accruing thereon to him, the said Henry M. Rector, his heirs and assigns forever, and the said Rector hereby agrees to pay to the said Hale the one-half of the value of the buildings in the Hot Springs Valley, included, however, in the following boundaries: to commence at the northwest corner of said Hale's present garden, thence west to the said boundary of the said quarter section, thence north with the said boundary to the divisional line of Hale and Woods, thence due east to cross Hot Spring Creek, thence south to a point as far south as the point of the beginning; the aforesaid value of the buildings to be ascertained and estimated by disinterested and suitable persons, each of the parties here contracting to choose one of each person, and the persons so chosen to select a third.

And the said Rector hereby agrees to pay to the said Hale five hundred dollars at the expiration of fifteen months from the date hereof, and the balance in two equal instalments of two and three years from the date of this instrument. And the parties each agree with the other that there is no judgment or mortgage which will effect the interest here conveyed, and the party of the first part

agrees that the buildings herein spoken of are to all remain as security for the payment of the money which the said Rector is to pay for them.

Witness our hand and seal at Hot Springs, day and date above written. HENRY M. RECTOR. [SEAL.]
JOHN C. HALE. [SEAL.]

Attest: E. CARLEY,
WM. P. STRICKLAND.

Note: Of the five hundred dollars, as well as the other payments hereinbefore spoken of, are in consideration of the buildings.

HENRY M. RECTOR.
JOHN C. HALE.

Attest: E. CARLEY,
WM. P. STRICKLAND.

This day personally appeared the within named Henry M. Rector and Jno. C. Hale, before me, Lawson Runyan, cl'k of the Circuit Court in and for the County of Hot Springs, and State of Arkansas, and severally acknowledged that they each signed, sealed, and executed the foregoing instrument of writing for the uses and purposes therein named, and witness my hand and seal at office, this 11 day of May, 1843.

[L. S.] LAWSON RUNYAN,
Clerk in and for the County aforesaid.

STATE OF ARKANSAS,
County of Hot Springs.

I, Lawson Runyan, Clerk of the Circuit Court, and ex-officio Recorder in and for the County of Hot Springs, and State aforesaid, do hereby certify that the annexed and foregoing instrument of writing was filed in my office on the 11th day of May, A. D. 1843, and the same is now duly recorded in record book "B," pages 34, 35, 36.

In testimony whereof, I have hereunto set my hand as clerk aforesaid, and affixed my official seal at office, this 12th day of May, A. D. 1843. [L. S.] LAWSON RUNYAN,
Clerk and ex-officio Recorder.

STATE OF ARKANSAS,
County of Hot Springs.

I, Jno. P. Emerson, Clerk of the Circuit Court, and ex-officio Recorder for said county, do hereby certify that the foregoing four pages contain a true, perfect and copy from the record of the matters therein set forth.

In testimony whereof, I have hereunto set my hand and affixed my seal of office at the county aforesaid, on this 28th day of February, A. D. 1856.

[L. S.] JNO. P. EMERSON, *Clerk.*

To which evidence the plaintiffs objected, and the Court sustained the objection, to which opinion of the Court in sustaining said objection and refusing to receive said paper as evidence, the defendant,

at the time, excepted and asked for time to prepare her bill of exceptions, which was granted her.

Whereupon the defendant offered Lawson Runyan, a witness, who testified: The public surveys were made to close in the New Madrid location; from my knowledge I am satisfied the plat (which is the same so certified by Henry M. Rector in this bill of exceptions) is substantially correct. I know the premises mentioned in the second count are on said quarter section as well as though I had seen the public surveys *record*. I have been with the county surveyor when he run it out. I have followed the surveyed lines to where it closed on the New Madrid claim, and kept on in the same course and thus found its location.

If a surveyor was to describe the half mile square in the southwest corner of section 33, town. 2 S., range 19 W., according to the public surveys, he would describe it as the fractional southwest quarter of section (33) thirty-three, and a part of Langlois' claim; the improvements I testified to as being in the possession of the defendant, are not on the fractional quarter, but are on the half mile square in the southwest corner of the section.

It has been frequently declared in the land office to witness that the S. W. ¼ 33 T. 2 S., R. 19 W., includes the half mile square in the southwest corner of the section, and consequently covered the land sued for.

The property mentioned in the second count is in the New Madrid claim.

The lines are run all around said section 33, except for a short distance, where the line is broken by the New Madrid claim; all the section corners, and half mile corners, except one, are established.

Defendant then offered to introduce Samuel Sorter, Abagail Sabin, and other witnesses, and prove that one Jno. Percifull inhabited, and claimed, and owned the improvements on the land in suit long prior to 1829, that some time about that year the said John leased some of the houses on the quarter section of land which the plaintiff by their said certificate of entry claim to Ludovicus Belding, plaintiff or afterwards, and that said Belding occupied said premises for a while, as tenant of said Percifull; that said Belding did not, and was not residing on and occupying said land on the 23d of May, 1830, but had, prior to that time, removed therefrom to the Gulpha, some six miles away; that said defendant is a tenant and claims under Jno. C. Hale, who claims under David Percifull, who was the only son and heir-at-law of said John; that defendant, and those under whom she claims, have been in possession of said premises for thirty years, and those under whom she claims have made valuable and lasting improvements upon said land far exceeding the value of the rents and profits, without any notice of any adverse title in any other person. Also that defendant's landlord was the owner of an improvement on public lands which was entered by the plaintiffs at the land office at Washington, which improvements cover the property proved to be in

the possession of the defendant, to which the plaintiffs object, and the Court sustained the objection, and refused to permit defendant to introduce evidence to prove said facts or either of them, to which decision of the Court the defendant at the time excepted, and asked for time to prepare her bill of exceptions, which is granted her.

The defendant then introduced Abagail Sabim, who testified that she was acquainted with the property in controversy in this suit at the commencement thereof and since. Some of the buildings in *tolerably* repair consisted, at the commencement of the suit, of one row of houses, a two-story house, 2 old rooms, a dining at the end of the small building, 4 rooms in the lower part of the large house that boarders occupied; would not think they would rent for much without furniture. Witness would not have given more than five hundred or six hundred dollars per annum rent for said property. 2 rooms at the end of the big frame house toward the mountain, from the main, was, and has been since the commencement of this suit, occupied by Jno. C. Hale. Rent by the year is worth about *about* $2.00 to $3.00 per month.

The defendant then introduced Jno. Faught, who testified that he was acquainted with the property in controversy in this suit. Would rent, in 1854, for seven or eight hundred dollars, without furniture. The defendant then asked the witness this question: State what the rent of the property in possession of defendant, in 1855, without the improvement made since the commencement of the suit, January 12th, 1854, was worth per annum, to which plaintiff objected, and the Court sustained the objection, and the defendant at the time excepted, and asked and obtained time to file her bill of exceptions. Including the improvements made in 1854, the rent was worth say $800.

The defendant then introduced Abraham Kempner, who testified that he was acquainted with the property in possession of Mrs. Hunter, in Hot Spring Valley. States that, without furniture, the property was worth $500 or $600 per annum. The defendant then asked what the rent of the property in possession of defendant in 1855, without the improvements made by defendant in 1854, was worth; to which plaintiff objected, and the Court sustained the objection, and the defendant excepted, and asked and obtained time to file his bill of exceptions. Witness then stated that, with said improvements, the rents was worth $700 for 1855.

When the defendant announced that she here closed, which testimony is all the testimony introduced or offered in this case. When the plaintiff asked the Court to instruct the jury as follows, to wit:

GAINES et al.
vs.
LORRETTA HUNTER.

The plaintiff moved the Court to instruct the jury:—

1st. That the certificate offered and read in evidence by the plain-

tiff are sufficient in law to enable them to maintain this action. 2d. That if the jury believe, from the evidence, that the defendant was in possession of the premises mentioned in the declaration at the time of the commencement of this action, they ought to find for the plaintiff. 3d. That if the plaintiffs are entitled to recover, they are also entitled to recover, by way of damages, the rents and profits of said premises from the time of the commencement of this suit down to the present time, according as the jury shall find the value of such rents and profits, from the evidence adduced before them.

WATKINS & GALLAGHER,
for Plaintiffs.

To the giving of which instructions, the defendant at the time objected, and *and* the Court overruled said objection, and gave said instruction to the jury, to which opinion and decision of the Court, in giving said instructions, the defendant at the time excepted, and asked for time to prepare her bill of exception, which is granted her.

And the defendant produced, and asked the Court to give instructions in the words and figures following, to wit:—

The defendant moves the Court to instruct the jury:—

If the jury believe, from the testimony, that there is not such a division of land known in the surveys of United States as the southwest quarter of section 33 (thirty-three), in township 2 (two), south of range nineteen, west of the fifth principal meridian, the jury must find for the defendant.

2d. If the jury believe, from the testimony, that the west half of section thirty-three, in township two, south of range nineteen west, is divided by the public surveys into the fractional southwest quarter and the northwest fractional quarter of said section, and the balance of said tract consists of a portion of New Madrid location, and in and no other way, and further, that the tract proven to be in possession of the defendant was on the New Madrid location, and not on the southwest fractional quarter, the jury must find for the defendant.

3d. The defendant is not liable for the rent of improvements made by herself since the commencement of this suit.

4th. If the jury believe, from the testimony, that the plaintiffs have failed to prove all the property described in the first or second counts to be in possession of defendants at the time of the institution of this suit, then the jury must find for the defendant.

5th. If the jury believe, from the testimony, that the person under whom the defendant claims owned and improvements on the public lands of the United States, which has been entered by the plaintiff (except the said Wm. H.), and the suit is brought to recover possessions of the said improvements, then the jury must not find any damages against the defendant.

6th. If the jury believe, from the testimony, that the defendant

put valuable and lasting improvements on the land in her possession, the jury must deduct from any damages assessed the additional value given to said lands by said improvements.

7. The certificate and transcript offered in evidence are insufficient evidence upon which to recover in this action.

8. If the jury believe, from the testimony, that there is an outstanding title equal or superior to the plaintiffs', the jury must find for the defendant.

To the giving said instruction, the plaintiff at the time objected, and the Court sustained said objection, and refusing to give the same, to which opinion of the Court, in refusing to give said instruction, the defendant at the time excepted, and asked for time to prepare her bill of exception, which is given her.

And now, on the first day of March, A. D. 1856, it being during the said term, and before said special Judge, in Court, in order to save and preserve the testimony and exception aforesaid, points and questions, the defendant brings here her bill, bill of exceptions, and prays that the same may be signed, sealed, and made of record herein, time having been given her until now to prepare the same, which is accordingly done.

Witness my hand and seal, a judge aforesaid, this 1st (first) day of March, A. D. 1856. J. C. MURRAY, [SEAL.]
Special Judge.

STATE OF ARKANSAS,
County of Hot Springs.

I, Jno P. Emerson, Clerk of the Circuit Court within and for said County, do hereby certify that the foregoing two hundred and five pages contain a true, perfect, and complete transcript of the cases therein mentioned.

In testimony whereof I have hereunto set my hand as such clerk, and affixed the seal of said Court at office in Rockport on this (4th) fourth day of April, A. D. 1856. [SEAL.]

JNO. P. EMERSON, *Clerk.*

And afterwards, to wit, at a Supreme Court of said State, begun and held on the 1st Monday in July, A. D. 1856, and on the 9th day thereof, were the following proceedings, to wit:—

At this day comes the said appellant, by her attorney, and on motion it is ordered that her assignment of errors be filed; and thereupon the same is filed.

Said assignment of errors is in the following words, to wit:—

And the said appellant comes and says, that there is manifest error in the record and proceedings, and also in giving judgment in this case in the Court below, wherefore, for said errors, she prays that said judgment may be reversed, annulled, set aside, and held for nought, &c. And for assignment of error she shows and points out the following causes, to wit:—

tiff are sufficient in law to enable them to maintain this action. 2d. That if the jury believe, from the evidence, that the defendant was in possession of the premises mentioned in the declaration at the time of the commencement of this action, they ought to find for the plaintiff. 3d. That if the plaintiffs are entitled to recover, they are also entitled to recover, by way of damages, the rents and profits of said premises from the time of the commencement of this suit down to the present time, according as the jury shall find the value of such rents and profits, from the evidence adduced before them.

WATKINS & GALLAGHER,
for Plaintiffs.

To the giving of which instructions, the defendant at the time objected, and *and* the Court overruled said objection, and gave said instruction to the jury, to which opinion and decision of the Court, in giving said instructions, the defendant at the time excepted, and asked for time to prepare her bill of exception, which is granted her.

And the defendant produced, and asked the Court to give instructions in the words and figures following, to wit:—

The defendant moves the Court to instruct the jury:—

If the jury believe, from the testimony, that there is not such a division of land known in the surveys of United States as the southwest quarter of section 33 (thirty-three), in township 2 (two), south of range nineteen, west of the fifth principal meridian, the jury must find for the defendant.

2d. If the jury believe, from the testimony, that the west half of section thirty-three, in township two, south of range nineteen west, is divided by the public surveys into the fractional southwest quarter and the northwest fractional quarter of said section, and the balance of said tract consists of a portion of New Madrid location, and in and no other way, and further, that the tract proven to be in possession of the defendant was on the New Madrid location, and not on the southwest fractional quarter, the jury must find for the defendant.

3d. The defendant is not liable for the rent of improvements made by herself since the commencement of this suit.

4th. If the jury believe, from the testimony, that the plaintiffs have failed to prove all the property described in the first or second counts to be in possession of defendants at the time of the institution of this suit, then the jury must find for the defendant.

5th. If the jury believe, from the testimony, that the person under whom the defendant claims owned and improvements on the public lands of the United States, which has been entered by the plaintiff (except the said Wm. H.), and the suit is brought to recover possessions of the said improvements, then the jury must not find any damages against the defendant.

6th. If the jury believe, from the testimony, that the defendant

put valuable and lasting improvements on the land in her possession, the jury must deduct from any damages assessed the additional value given to said lands by said improvements.

7. The certificate and transcript offered in evidence are insufficient evidence upon which to recover in this action.

8. If the jury believe, from the testimony, that there is an outstanding title equal or superior to the plaintiffs', the jury must find for the defendant.

To the giving said instruction, the plaintiff at the time objected, and the Court sustained said objection, and refusing to give the same, to which opinion of the Court, in refusing to give said instruction, the defendant at the time excepted, and asked for time to prepare her bill of exception, which is given her.

And now, on the first day of March, A. D. 1856, it being during the said term, and before said special Judge, in Court, in order to save and preserve the testimony and exception aforesaid, points and questions, the defendant brings here her bill, bill of exceptions, and prays that the same may be signed, sealed, and made of record herein, time having been given her until now to prepare the same, which is accordingly done.

Witness my hand and seal, a judge aforesaid, this 1st (first) day of March, A. D. 1856. J. C. MURRAY, [SEAL.]
Special Judge.

STATE OF ARKANSAS,
County of Hot Springs.

I, Jno P. Emerson, Clerk of the Circuit Court within and for said County, do hereby certify that the foregoing two hundred and five pages contain a true, perfect, and complete transcript of the cases therein mentioned.

In testimony whereof I have hereunto set my hand as such clerk, and affixed the seal of said Court at office in Rockport on this (4th) fourth day of April, A. D. 1856. [SEAL.]

JNO. P. EMERSON, *Clerk.*

And afterwards, to wit, at a Supreme Court of said State, begun and held on the 1st Monday in July, A. D. 1856, and on the 9th day thereof, were the following proceedings, to wit:—

At this day comes the said appellant, by her attorney, and on motion it is ordered that her assignment of errors be filed; and thereupon the same is filed.

Said assignment of errors is in the following words, to wit:—

And the said appellant comes and says, that there is manifest error in the record and proceedings, and also in giving judgment in this case in the Court below, wherefore, for said errors, she prays that said judgment may be reversed, annulled, set aside, and held for nought, &c. And for assignment of error she shows and points out the following causes, to wit:—

1st. Said Circuit Court erred in refusing the plaintiff's application for a continuance, whereas said continuance should have been granted.

2d. Said Circuit Court erred in receiving, recording and rendering judgment upon the verdict, because said verdict is indefinite, uncertain and insufficient, and could only be rendered certain by taking the testimony of witnesses, whereas said verdict should have been refused.

3d. Said Circuit Court erred in permitting the certificate of the Register and Receiver, and accompanying documents to be read in evidence, whereas said papers should have been refused.

4th. Said Circuit Court erred in refusing to permit the defendant to read in evidence the deed on page 96, whereas said deed should have been read in evidence.

5th. Said Circuit Court in refusing to permit the defendant to offer in evidence the record of the Langlois claim and papers accompanying them, whereas they should have been received.

6th. Said Circuit Court erred in refusing to permit the defendant to read the certificate copy of the deed from Rector to Hale.

7th. Said Circuit Court erred in permitting the defendant to prove—

I. That John Percifield owned and claimed the premises before 1829.

II. That about that time he leased the premises to Belding.

III. That Belding did not cultivate the quarter in 1829.

IV. That Belding did not occupy the quarter in May 29th, 1830.

V. That defendant is the tenant of John C. Hale, who holds the title of David Percifield, who is the only son and heir of John Percifield.

VI. That the defendant and those under whom she claims have been in possession for 30 years, and have made valuable improvements without notice.

VII. That defendant's landlord was the owner of a valuable improvement on public land which was entered by the plaintiffs at the U. S. Land Office at Washington, and that the improvements are the same sued for.

8. That said Circuit Court erred in refusing to permit said defendant to prove the value of the rents of the property recovered without taking into consideration the improvements made after suit brought.

9. Said Circuit Court erred in giving each of the instructions of the plaintiff.

10. Said Circuit Court erred in refusing to give each of the instructions of the defendant.

11. Said Circuit Court erred in giving judgment for the plaintiff.

12. And for manifest other errors.

WILLIAMS & FLANAGIN.

And afterwards, to wit, on the 20th day of October, of said term, were the following proceedings:—

At this day come said appellees, by their attorney, and on motion it is ordered that their joinder in error be filed, and thereupon the same is filed. And at the same time comes said appellant, by attorney, and this cause is submitted on the briefs filed, and by the Court taken under advisement.

Said joinder in error is as follows:—

Come the said appellees, by their attorney, and say, that in the record of the proceedings aforesaid, and in the judgment aforesaid, in manner and form as herein rendered, there is no error. Wherefore they pray that said judgment may be in all respects affirmed.

WATKINS & GALLAGHER,
Att'ys for Appellees.

And afterwards, to wit, on said 1st day of August, A. D. 1857, at a term of said Supreme Court begun on said first Monday in July, A. D. 1857, to which term this cause was continued by operation of law, were the following proceedings, herein:—

Final Judgment of Supreme Court.

This cause came on to be heard upon the transcript of the record of the Circuit Court of Hot Spring County, and was argued by counsel, on consideration whereof, the court being of opinion that there is no error in the proceedings and judgment of said Circuit Court in this cause, except as to the ruling of the court that the plaintiffs therein were entitled to recover rents and profits, suggested to the appellees that the judgment of said Circuit Court would be reversed, unless they would remit herein the said damages so recovered; whereupon come said appellees, by their attorney, and on motion file their remittitur damna, which is in the following words: "And the said appellees, by attorney, come and say, that they elect to and do remit the sum of $2250\frac{00}{100}$ adjudged to them as and for damages in this behalf, in said Circuit Court, and all right of action on the appeal bond herein. WATKINS & GALLAGHER,
Atto. for Appellees."

It is therefore considered by the court that the judgment of said Circuit Court in this cause rendered, be, and the same is hereby in all things affirmed, except as to the said sum of $2250\frac{00}{100}$ damages herein remitted.

It is further considered that said appellant recover of said appellees all her costs in this court in this cause expended and have execution thereof.

And afterwards, to wit, on the 8th day of August, A. D. 1857, the said appellant presented to the Clerk of said Supreme Court a writ of error issued from the Circuit Court of the United States, for the Eastern District of Arkansas, and duly allowed by the Hon. Elbert H. English, Chief Justice of our said Supreme Court, and at the

same time filed a copy of said writ of error, which is in the following words:—

Copy of Writ of Error.

THE UNITED STATES OF AMERICA,
Eastern District of Arkansas.

The President of the United States to the Honorable the Judges of the Supreme Court of the State of Arkansas, greeting:—

Because, in the record and proceedings, as also in the rendition of the judgment of a plea in a certain action of ejectment, which is in the said Supreme Court before you, between Loretta T. Hunter plaintiff, and William H. Gaines, Maria Gaines, his wife, Albert Belding, Henry Belding, and George Belding, heirs and legal representatives of Ludovicus Belding, deceased defendants, manifest error has intervened, as it is alleged, to the great damage of the said plaintiff, as by her complaint appears. And we being willing that the error, if any hath been, shall be duly corrected, and full and speedy justice be done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ: so that you have the same at Washington City on the first Monday of December next, A. D. 1857, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the Supreme Court may cause to be done therein, to correct that error, what of right and according to the laws of the United States should be done.

Witness, the Honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, this 3d day of August, in the year of our Lord one thousand eight hundred and fifty-seven, and the seal of the Circuit Court of the United States in and for the Eastern District of Arkansas.

[L. S.] Attest, WM. FIELD, *Clerk.*

And at the same time said plaintiff in error filed her bond in error in this cause, duly approved by our said Chief Justice, which is in the following words:—

Bond in Error.

SUPREME COURT OF THE UNITED STATES,
LORETTA T. HUNTER,
vs.
WILLIAM H. GAINES and MARIA GAINES his wife, ALBERT BELDING, HENRY BELDING, and GEORGE BELDING, heirs of LUDOVICUS BELDING, deceased.

Know all men by these presents that we, Loretta T. Hunter as principal, and Cyrus A. Hale, John C. Hale, R. H. Johnson, as secu-

rities, are held and firmly bound unto the above named William H. Gaines, Maria Gaines, his wife, Albert Belding, Henry Belding, and George Belding, in the sum of one thousand dollars, to be paid to the said William H. Gaines, Maria Gaines, his wife, Albert Belding, Henry Belding, and George Belding, their executors or administrators, to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals and dated 7th August, 1857.

Whereas the above named Loretta T. Hunter hath prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above entitled suit by the Supreme Court of the State of Arkansas:

Now, therefore, the condition of this obligation is such, that if the above named Loretta T. Hunter shall prosecute her writ of error to effect and answer all damages and costs, if she shall fail to make good her plea, this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

LORETTA T. HUNTER. [SEAL.]
J. C. HALE. [SEAL.]
R. H. JOHNSON, [SEAL.]
CYRUS A. HALE. [SEAL.]

Sealed and delivered in the presence of
SAM. W. WILLIAMS.
JAMES B. JOHNSON.

Approved August 7, 1857. E. H. ENGLISH,
Ch. J. Sup. Ct., Arks.

STATE OF ARKANSAS,
In the Supreme Court.

In testimony that the foregoing two hundred and twenty-five pages contain a true copy of the record and proceedings of said Supreme Court in said cause, except the opinion of the Court and the briefs of counsel:

I, Luke E. Barber, Clerk of said Supreme Court, have hereto set my hand and affixed the seal of said court, at my office in the city of Little Rock, this 12th day of November, A. D. 1857.

[SEAL.] L. E. BARBER, *Clerk.*

THE UNITED STATES OF AMERICA,
Eastern District of Arkansas.

The President of the United States to the Honorable the Judges of the Supreme Court of the State of Arkansas, greeting:—

Because in the record and proceedings, as also the rendition of the judgment, of a plea in a certain action of ejectment which is in the said Supreme Court before you, between Loretta T. Hunter, plaintiff, and William H. Gaines, Maria Gaines, his wife, Albert Beld-

ing, Henry Belding, and George Belding, heirs and legal representatives of Ludovicus Belding, deceased, defendants, manifest error has intervened, as is alleged, to the great damage of the said plaintiff, as by her complaint appears, and we being willing that the error, if any hath been, should be duly corrected, and full and speedy justice be done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington City on the first Monday of December next, A. D. 1857, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the Supreme Court may cause to be done therein, to correct that error, what of right and according to the laws of the United States should be done.

Witness the Hon. Roger B. Taney, Chief Justice of the Supreme Court of the United States, this 3d day of August, in the year of our Lord one thousand eight hundred and fifty-seven, and the seal of the Circuit Court of the United States in and for the Eastern District of Arkansas.

[SEAL.] Attest, WM. FIELD, *Clerk.*

Allowed Aug. 7th, 1857.

E. H. ENGLISH, *Ch. J. Sup. Ct., Ark.*

STATE OF ARKANSAS,
In the Supreme Court.

I, Luke E. Barber, Clerk of the Supreme Court of the State of Arkansas, hereby certify that, in obedience to the mandate of the within writ of error, I have certified a full, true, and complete transcript of the record of the case therein (except as in the certificate thereto is excepted), which is hereto attached.

In testimony whereof, I have hereto set my hand and affixed the seal of said Court, at my office in the city of Little Rock, this 12th day of October, A. D. 1857.

[SEAL.] L. E. BARBER, *Clerk.*

Indorsed—Loretta T. Hunter *vs.* Wm. H. Gaines *et al.* Writ of error.

United States of America to William H. Gaines, Maria Gaines, his wife, Albert Belding, Henry Belding, and George Belding, heirs at law of Ludovicus Belding, deceased, greeting:—

You are hereby cited and admonished to be and appear at a Supreme of the United States to be held at Washington City on the first Monday of December next, pursuant to a writ of error filed in the Clerk's office of the Supreme Court of the State of Arkansas, wherein Loretta T. Hunter is plaintiff and you are defendant in error, to shew cause, if any there be, why the judgment in the said

745.

writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Elbert H. English, Chief-Justice of the said Supreme Court of the State of Arkansas, this 4th day of August, 1857.

E. H. ENGLISH,
Chief Justice of the Supreme Court of the State of Arkansas.

We acknowledge due service of this notice.

WATKINS & GALLAGHER.

Indorsed—Loretta T. Hunter *vs.* William H. Gaines. Citation.

Filed 14th December, 1857.

746.

SUPREME COURT OF THE UNITED STATES.

No. 199.

ROXANA BUTLER AND EDMUND MILLS, Plaintiffs in Error,

vs.

WILLIAM H. GAINES AND MARIA GAINES, his Wife, ALBERT BELDING, HENRY BELDING AND GEORGE BELDING, Heirs and Legal Representatives of LUDOVICUS BELDING, Dec'd.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ARKANSAS.

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STATE OF ARKANSAS,
In the Supreme Court, set:

Be it remembered, that at a Supreme Court of the State of Arkansas, begun and held at the court house in the city of Little Rock, on the 6th day, being the first Monday in July, A. D. 1857, before the Honorable Christopher C. Scott, and Thomas B. Hanly, Judges, were the following proceedings, on the first day of August of said term:—

EDMUND MILLS AND ROXANNA BUTLER, Appellants,
vs.
WILLIAM H. GAINES *et al.*, Appellees.

Appeal from Hot Spring Cir. C't.

Be it remembered, that heretofore, to wit, on the 15th day of June, A. D. 1856, the said Edmund Mills *et al.*, appellants in this case, filed the transcript of the record of said Circuit Court in this case on appeal therein taken by them from the judgment of said Circuit Court, which said transcript is in the words and figures following to wit:—

STATE OF ARKANSAS,
County of Hot Spring, ss.

In the Hot Spring Circuit Court, to August Term, 1854.

William H. Gaines, and Maria Gaines, his wife, formerly Maria Belding, Albert Belding, Henry Belding, and George Belding, plaintiffs, complain of Edmund Mills defendant herein, of a plea of ejectment.

For said plaintiffs declare and say: That heretofore, to wit, on the 20th day of December, 1851, at the county aforesaid, they the said plaintiffs were lawfully entitled to the possession of certain premises, with the appurtenance, situate in the said county of Hot Spring, and within the jurisdiction of this court, to wit: a certain tract or parcel of land, known and described on the plats of the public surveys, as the southwest quarter of section thirty-three in township two, south of range nineteen west, containing one hundred and sixty acres, together with the buildings, houses, improvements, privileges, and appurtenances and rights thereunto appertaining and belonging, and said plaintiffs being so entitled to the possession thereof, the said defendants afterwards, to wit, on the day and year last aforesaid, at the county aforesaid, entered into and upon the said premises and ejected the said plaintiffs therefrom, and unlawfully withhold from said plaintiffs the possession thereof.

2d. And said plaintiffs further declare and say, that heretofore, to wit: as &c., aforesaid, at &c., last aforesaid, said plaintiffs were law-

fully entitled to the possession of certain other premises, with the appurtenances, situate in the said county of Hot Springs, and within the jurisdiction of this court, to wit: All that part of a certain tract or parcel of land, known and described on the plats of the public surveys as the southwest quarter of section thirty-three, in township two south of Range nineteen west, which includes the messuages, dwelling house and store, now occupied by the defendant in the Hot Spring Valley, bounded on the south by the premises now occupied by James Sumpter, and the store occupied by George Belding, and on the north by the premises occupied by Harrison P. Flowers in January, 1851, and on the east by the stage road leading from the Hot Springs to Little Rock, together with the buildings, houses, improvements, privileges, appurtenances and rights, thereunto appertaining and belonging, and the said plaintiffs being so entitled to the possession thereof, the said defendants afterwards, to wit, on the day and year last aforesaid, entered into and upon the said premises and ejected the said plaintiffs therefrom, and unlawfully withholds from said plaintiffs the possession thereof.

Therefore, said plaintiffs say they are injured, and have sustained damages in the sum of two thousand dollars, and therefore they sue, &c.

CURRAN & GALLAGHER.

Endorsements on said declaration.

137.

WILLIAM H. GAINES *et al.*
vs.
EDMUND MILLS.
} Ejectment.

Declaration.

Filed and writ issued, Feb. 11, 1854.

JNO. P. EMERSON, *Clerk.*

STATE OF ARKANSAS,
County of Hot Spring.

The State of Arkansas, to the Sheriff of Hot Spring County Greeting:—

You are hereby commanded to summon Edmund Mills, if he be found within your bailiwick, to appear before the judge of our Circuit Court of Hot Spring county, at the court house in the county aforesaid, on the second day of our next August term, at a court to be holden on the last Monday of August next, then and there to answer William H. Gaines and Maria Gaines, his wife, formerly Maria Belding, Albert Belding, Henry Belding and George Belding, to a plea of ejectment, to the damage of said plaintiffs of two thousand dollars, and that you make due return of this writ to said court.

In testimony whereof I have hereunto set my hand as clerk of said Circuit Court, and affixed the seal of office this 11th day of July, 1854, and of the State the year.

[L. S.] JNO. P. EMERSON, *Clerk.*

Endorsements.

WILLIAM H. GAINES *et al.*
vs.
EDMUND MILLS. } 137.

Summons.

Clerk's fee 1 25
Sheriff's fees 1 88

I executed the within, on Edmund Mills, at Hot Springs, in Hot Spring County, by reading the contents in his presence and hearing.
Feb'y 18th, 1854. JOSEPH JESTER, *Sheriff.*

STATE OF ARKANSAS,
County of Hot Springs.

At a Circuit Court begun and holden in and for the County of Hot Spring, in the State of Arkansas, at the court house in the town of Rockport, on the last Monday of August, in the year of our Lord eighteen hundred and fifty-four, being the twenty-eighth day of said month. Present and presiding the Honorable Theodric F. Sorrels, Judge of the Second Judicial Circuit of said State, Judge.

Proceedings had before the Honorable Theodric F. Sorrels, on said day:—

WILLIAM H. GAINES *et al.*
vs.
EDMUND MILLS. } Ejectment.

Came said parties, and by consent it is ordered that this cause be continued without prejudice.

STATE OF ARKANSAS,
County of Hot Spring.

At a Circuit Court begun and held in and for the County of Hot Springs, in the State of Arkansas, at the court house in the town of Rockport, on the last Monday of February, in the year of our Lord one thousand eight hundred and fifty-five, being the twenty-sixth day of said month. Present and presiding the Honorable Theodric F. Sorrels, Judge of the Second Judicial Circuit of said State, Judge.

Proceedings had before the Hon. Theodric F. Sorrels, on Monday, February twenty-sixth, eighteen hundred and fifty-five.

WILLIAM H. GAINES *et al.*
vs.
EDMUND MILLS. } Ejectment.

Came the parties by attorney, and on motion and by consent it is ordered that this suit be continued.

STATE OF ARKANSAS,
County of Hot Spring.

At a Circuit Court begun and held in and for the county of Hot

Spring, in the State of Arkansas, at the court house in the town of Rockport, on the last Monday of August, in the year of our Lord one thousand eight hundred and fifty-five, being the twenty-seventh day of said month. Present and presiding the Hon. Theodric F. Sorrels, Judge of the Second Judicial Circuit of said State, Judge.

Proceedings had on August twenty-eighth (Tuesday), 1855.

Absent, the Hon. Theodric F. Sorrels, Judge.

Present and presiding, the Hon. John C. Murray, Special Judge.

Special Judge's Commission.

It is ordered the commission of the special judge be spread on the records of the court, which is accordingly done, as follows:—

THE STATE OF ARKANSAS.

To all whom these presents shall come, greeting:—

Know ye that, reposing special trust and confidence in the ability, honesty, and law knowledge of John C. Murray, and by virtue of the authority in me vested by an act of the General Assembly of the State of Arkansas, entitled "An act making appropriations for the years eighteen hundred and fifty-five, eighteen hundred and fifty-six, and part of the year eighteen hundred and fifty-four, and for the balance due for the State," approved January 12th, 1855, I, Elias N. Conway, Governor of the State of Arkansas, do hereby appoint and commission him, the said John C. Murray, Special Judge of the Circuit Court, to adjudicate, and determine certain causes pending in the Circuit Court in Hot Springs County, in the Second Judicial Circuit, in the State of Arkansas, from adjudicating which T. F. Sorrels, Judge of the Second Judicial Circuit of said State, has certified to me that he is disqualified by law, which causes are entitled as follows, to wit: W. H. Gaines and Maria, his wife, formerly Maria Belding, Albert Belding, Henry Belding and George Belding, by his guardian, Henry M. Rector and William Steadham; Same *vs.* John C. Hale; Same *vs.* James Sumpter; Same *vs.* Harrison D. Flowers; Same *vs.* William Puckett; Same *vs.* Patrick Burke; Same *vs.* Loretta Hunter; Same *vs.* Edmund Mills; Same *vs.* Jacob W. Parker; Same *vs.* Abraham Kempner. He, the said John C. Murray, is therefore hereby authorized to do and perform all and singular the duties incumbent on him as Special Judge of the Circuit Court for the trial and determination of the causes aforesaid, according to law and the trust reposed in him.

In testimony whereof, I have hereunto set my hand and caused the seal of the State of Arkansas to be affixed, at Little Rock, this 15th day of August, in the year of our Lord one thousand eight hundred and fifty-five, and of the Independence of the United States of America the 80th year. ELIAS N. CONWAY.

By the Governor, [L. S.] D. B. GREER, *Secretary of State*,
By RICHARD H. JOHNSON,
Deputy Secretary of State.

THE STATE OF ARKANSAS,
County of Hot Springs.

At a Circuit Court begun and holden in and for the County of Hot Springs, in the State of Arkansas, at the court house in the town of Rockport, on the last Monday of February, in the year of our Lord eighteen hundred and fifty-six, being the twenty-fifth day of said month. Present and presiding, the Hon. Theodric F. Sorrels, Judge of the Second Judicial Circuit of said State, Judge.

Proceedings had before the Hon. Theodric F. Sorrels, to wit: on the 29th day of February (Friday), 1856, it being a subsequent day of said term.

Absent, the Hon. Theodric F. Sorrels, Judge.

Present, the Hon. John C. Murray, Special Judge.

WILLIAM H. GAINES and MARIA GAINES, his wife, ALBERT BELDING, HENRY BELDING and GEORGE BELDING.
vs.
EDMUND MILLS.
} Ejectment.

Came the plaintiffs by attorney, and came Roxana Butler by attorney, and on leave asked and obtained, files her motion herein.

WM. H. GAINES *et al.*
vs.
EDMUND MILLS.
} Ejectment.

In the Circuit Court of Hot Spring County, at February Term, 1856, comes Roxana Butler, and shows to the Court here that since the commencement of this suit she has purchased and taken possession of the premises then in possession of said Edmund Mills, and she is now in possession thereof, and her said possessions are involved in this suit; that said Mills has left the country, and if judgment is rendered against him she will be dispossessed, and not the said Mills.

Wherefore she prays that she may be made a party, and permitted to defend in the place of said Mills, or be substituted in his place.

WILLIAMS & WILLIAMS, *Att'ys for Butler.*

Which motion is submitted. In consideration whereof, it is ordered that she be made party defendant herein.

On leave asked and obtained, by consent said Roxana Butler enters, in short, on the record, her plea of not guilty herein.

On leave asked and obtained, by consent the plaintiffs take issue in short, on the record on said plea.

Came said Mills by attorney, and on leave asked and obtained, enters in short on the record his plea of not guilty herein.

On leave asked and obtained, by consent the plaintiffs take issue in short on the record on said plea.

On leave asked and obtained, the defendants file their motion for continuance herein.

WM. H. GAINES
vs.
EDMUND MILLS. } Ejectment.

In the Circuit Court of said County, at February Term thereof, 1856.

And the said defendant comes and moves the Court to continue this cause until the next term of this Court, for the reasons set forth in the accompanying affidavit. WILLIAMS & WILLIAMS.

STATE OF ARKANSAS,
County of Hot Springs:

I, Roxana Butler, being duly sworn, do depose and say that the defendant is not ready to go to trial in the above entitled case, because, first, she believes, from information and advice of counsel, that it is important and material to the defence in this case to produce the original or a certified copy of a New Madrid certificate, issued to Francis Langlois, No. 467, and survey made under said certificate, which certificate was located on the property sought to be recovered in this suit prior to any claim of the plaintiff's ancestor, and which claim or title is held adverse to the plaintiff's. That said certificate and survey has been present several of the preceding terms of this Court, and the holder and owner of said certificate, and this defendant, as affiant is informed and believes, have acted together in defending against the claim of the plaintiffs; and affiant had every reason to believe, and did believe, that said certificate and survey would have been present before the Court, and she now believes that said papers would have been here but for the fact, as affiant is informed and believes, that Henry M. Rector, the owner and holder of said claim, is now detained at home by a sick family. That she did not know that said papers and the said Henry M. Rector would not be in attendance at the present term of the Court until it was *to* late to procure said papers in time for the trial in the case.

That she is informed by counsel in this cause, and believes it to be true, *the* he said counsel has spoken while at Little Rock, where said certificate is in, &c., to the production of said papers to Rector's counsel, and that it was a mutual understanding that said papers would be present and used in this case; and that she can only state facts, but is informed that the papers aforesaid show a legal as against the plaintiffs. That said survey was a valid and sufficient survey and location of said certificate in the year 1819, and a corroborating survey in 1838. That said papers show said location, together with a duly certified copy of said New Madrid certificate by the Commissioner of the General Land Office of the United States, can be procured by the next term of this Court.

Secondly. That said defendant in this case defends on the ground that there is an outstanding superior equitable title in John C. Hale, who claims under a valid pre-emption, and that the certificate issued

to the plaintiffs is not a valid nor sufficient certificate, and that the same issued upon insufficient testimony.

In order to establish the above facts, it is necessary and material to have in this Court the testimony offered and received at several times, touching the pre-emption claimed by said John C. Hale, and the pre-emption upon which the certificate issued to the plaintiffs was granted.

That copies of said testimony was forwarded to the clerk of this Court before the last term, duly certified by the Commissioner of the General Land Office, to be used as evidence before this Court against said plaintiffs in this and other causes now pending before this Court, and for the benefit of affiant as well as others claiming under John C. Hale; and said clerk received said papers, and placed them in his office, where they remained until the last term of this Court, and where this affiant supposed they still were until after the commencement of this term of the Court, when she first was informed that they were missing from said office, and neither affiant nor the counsel have been able to procure said papers, or ascertain where they are.

That by her information and belief, said testimony clearly proves that John Perciful, under whom adverse title is set up, had a valued pre-emption to the land sued for under the act of Congress of April the 12th, 1814, and that all the requisite steps were taken, in order to perfect said pre-emption under the act of Congress authorizing claims of that character to be perfected, passed in 1843. That said John Percifull inhabited and cultivated said tract prior to and at the time of the passage of said act of April 12th, 1814, and never did remove from the territory of Missouri, where said lands then lay.

That due and legal notice of said pre-emption was given to the proper land officer, and proof thereof fully made, according to the laws of Congress governing the same. That said depositions further prove that the plaintiffs or their ancestor wholly failed to prove their pre-emption, if they had one, within the limitation of the act of Congress under which they claim.

Thirdly. Defendant defends on the ground that said certificate is peculiar in its character and form, and will probably be revoked, and affiant is unable to know to whom to *allow* until a final decision is made at the department at Washington, which she is informed and believes will soon be done.

That she is anxious to have the suit finally determined, but wishes to have her whole defence placed upon the record, so that it can be received by the appellate courts, and she is advised by her counsel that it will be impossible to do so without papers, &c.; that they are not absent from this court by the connivance or consent of affiant or the defendant in this cause.

That she knows of no other testimony that will supply their place, or prove the same facts, which she can procure during the present term of this Court.

That if a continuance be granted, defendant can procure said

papers and testimony, or supply their loss, by the next term of this Court; and that this application is not made for delay, but that justice may be done. R. BUTLER.

Sworn to on the 29th Feb'y, 1856.

JOHN P. EMERSON, *Clerk.*

Which motion is resisted, and is submitted, and by the Court overruled.

The defendants except to the decision of the Court overruling said motion, and ask and obtain leave to tender their bill of exceptions during the term.

On motion it is ordered that a jury come; and thereupon came Armstead Jordan, Tilghman H. Cloud, Wiley A. Ward, Isham J. Ready, William C. Stribling, Sam'l F. Gentry, Benjamin C. Tyler, Andrew P. Sanders, George C. Miller, Jesse Moore, Thomas Barton, and Reuben Gant, twelve good and lawful men of the County of Hot Springs, who being duly elected, empanelled, and sworn well and truly to try the issue joined in this case, and a true verdict to render according to the evidence, who, after hearing the evidence adduced, and the argument of counsel, and the instructions of the Court, returned here into court the following verdict, to wit: "We, the jury, find for the plaintiffs upon the issue joined, and assess their damages to the sum of one hundred and fifty dollars, say $150 00. Wiley A. Ward, foreman."

It is therefore considered by the Court that the plaintiffs, William H. Gaines, and Maria Gaines, his wife, Albert Belding, Henry Belding, and George Belding, do have and recover of and from the said defendant, Edmund Mills and Roxana Butler, as well the possession of the lands and premises described in the declaration in this behalf, being all that part of a certain tract or parcel of land known and described on the plats of the public surveys as the southwest quarter of section thirty-three, in township two, south of range nineteen west, which includes the messuage, dwelling-house, and store, at the time of the commencement of this suit, to wit, July 11, A. D. 1854, occupied by the defendant, Edmund Mills, in the Hot Spring valley, bounded on the south by the premises then occupied by James Sumpter and the store occupied by George Belding, and on the north by the premises occupied by Harrison D. Flowers in January, A. D. 1851, and on the west by the stage road leading from the Hot Springs to Little Rock, together with the buildings, houses, and improvements thereunto belonging, and the said sum of one hundred and fifty dollars for the damages as aforesaid assessed by the jury in this behalf, as also all their costs in and about their suit in this behalf expended, to be taxed, &c., and it is ordered that said plaintiffs do have execution hereof, by writ of possession for said lands and premises, with command to levy and collect the damages and costs aforesaid, as by law in such case provided.

Pending the trial of this cause, the defendants excepted to sundry

decisions of the Court, and asked and obtained leave until a future day of this term to prepare and tender their bill of exceptions in respect hereof; and thereupon the said defendants prayed an appeal to the Supreme Court from the judgment rendered herein, and the said plaintiffs waiving any affidavit for such appeal, the same is by the Court allowed and granted, and to the end that such an appeal may operate as a stay of execution hereof, the said Roxana Butler and Moses R. Woods came into court here, and the said Roxana as principal, and Moses R. as security, acknowledge themselves to owe and be indebted to the said plaintiffs in the just and full sum of five hundred dollars, to be levied of their respective goods and chattels, lands and tenements, to be void on condition that the said appellants will prosecute their appeal with due diligence to a decision in the Supreme Court, and if the judgment appealed from is affirmed, or their appeal dismissed, they will pay whatever of debt, damages, and costs have been recovered against them by the judgment of this Court, together with the interest that shall accrue thereon, or that they will otherwise perform the judgment of the Circuit Court, and will also pay the costs and damages that may be adjudged against them in the Supreme Court upon their appeal in this behalf; else to remain in full force.

Proceedings had on March 1st, A. D. 1856, before the Hon. John C. Murray, special Judge.

WILLIAM H. GAINES *et al.*
vs.
EDMUND MILLS and ROXANA BUTLER. } Ejectment.

Came the parties by attorney, and, on the leave granted, the defendant tender their bill of exceptions, which is signed, sealed, and ordered to be recorded herein.

WILLIAM H. GAINES *et al.*
vs.
EDMUND MILLS and ROXANA BUTLER.

In Hot Spring Circuit Court, Feb'y, A. D. 1856.

Be it remembered, that on this 29th day of February, A. D. 1856, came the said defendants and presented their application for continuance herein, which was in the words and figures following, to wit:—

(See preceding pages, from twenty-first line on page eleven to eighteenth line inclusive on page sixteen, where said motion is correctly inserted.) To which the plaintiffs objected, and after argument of counsel, the Court overruled said motion, and refused to allow a continuance; to which defendants excepted, and asked and obtained time to file their bill of exceptions during the present term of the Court; thereupon the party plaintiffs announcing themselves read for trial, and the defendants stating that they were as much so as they could be during the present term; whereupon a jury came to try the issue joined, &c.; whereupon the plaintiffs, after first

proving the signatures of the Register and Receiver, offered in evidence the following certificates, documents, in the words and figures following, to wit:—

Receiver's Receipt.

No. 6545.

RECEIVER'S OFFICE AT WASHINGTON, ARKANSAS,
December 19th, 1851.

Received from Maria Gaines, wife of Wm. H. Gaines, formerly Maria Belding, Albert Belding, Henry Belding, and George Belding, the heirs and legal representatives of Ludovicus Belding, deceased, of Hot Spring County, in the State of Arkansas, the sum of two hundred dollars, in full for the southwest quarter of section thirty-three (33), in township two south of range nineteen west, containing one hundred and sixty acres, according to the return of the Surveyor-General, at $1 25 per acre.

According to instructions, I note that this entry interferes with the New Madrid location of Francis Langlois, on the same land, and also embraces land directed to be reserved by the act of Congress of 20th April, 1832, and is only permitted to be made under the decision of the Secretary of the Interior, under date of November 21st, 1851, and the instructions of the Commissioner of the General Land Office, under date of November 25th, 1851, in accordance with said decision. B. F. HEMPSTEAD, *Receiver.*

Register's Transcript.

GENERAL LAND OFFICE,
November 25th, 1851.

GENTLEMEN: The papers accompanying your letters of the 18th and 24th March last, in reference to the claim to the Hot Springs in Arkansas, having been submitted to the Secretary of the Interior for his action on the legal point in the case, to wit, the reservation of the land by the act of Congress, they were returned to this office for its decision on the respective merits of the pre-emption claims, irrespective of this question.

On the 26th of August last, this office returned the papers with its decision adverse to the claim of John Perciful, and in favor of that of the heirs of Ludovicus Belding, it agreeing with you both as to the establishment of the facts of cultivation in 1829, and possession on the 29th of May, 1830, and regarding the objection of the Receiver founded upon the opinion that those acts were performed as the tenant of another, as not effecting the validity of the claim.

On the 14th ult. this office received the opinion and decision of the Secretary of the Interior dated the 10th of that month, in which he sustains the existing validity of the act of 20th April, 1832, it not having — repealed or affected by any subsequent law, therefore none of the claims preferred for this land are of any legality. On the 14th ult. an application was made by the attorney of the heirs of

Belding for permission to make an entry of said claim in order that they may be placed in a proper position for the assertion of their rights hereafter in the courts, stating that of course under the decision of the secretary they should not ask for a patent.

This was refused by this office, and an appeal from that decision taken to the Secretary of the Interior, who, on the 21st inst., addressed to this office a letter, a copy of which is enclosed.

In accordance with the direction of the secretary therein contained, you are instructed to permit the heirs of Ludovicus Belding to make payment for the southwest quarter of section 33, township 2 south, range 19 west, as containing 160 acres, and in addition to the ordinary entry thereof upon your books, and the return to this office, you will note the fact of its interference with the New Madrid location of Langlois; of its embracing land directed to be reserved by act of 20th April, 1832, and that said entry is permitted under the secretary's decision of 21st Nov., 1851. Similar annotations will be made on the receiver's receipt and the register's certificate.

Respectfully,
Your ob'd't servt,
J. BUTTERFIELD,
Commissioner.

Register and Receiver, Washington, Arks.

Copy.

DEPARTMENT OF THE INTERIOR, WASHINGTON, *Nov.* 21, 1851.

Sir: Upon consultation with the attorney general, and after full consideration of the application of A. H. Lawrence, Esq., attorney for the heirs of L. Belding, one of the claimants to the Hot Springs of Arkansas, on appeal from your decision of the 15th ultimo, against permitting said heirs to make an entry under the acts of 29th May, 1830, and 14th July, 1832, I have concluded that it will be proper and in accordance with precedent to permit them to do so, and you will therefore instruct the register and receiver accordingly. Said entry will remain subject to the same power of revision and control by the General Land Office, and this department, as may be lawfully exercised over any ordinary entry. The government will still hold the ultimate power of protecting its own right, while the claimants will be placed in a position to contest the adverse claims of others to the same lands.

I am, very respectfully,
Your ob'd't serv't,
ALEX. H. H. STUART, *Secretary.*

The Commissioner of the General Land Office.

No. 6545.

LAND OFFICE, WASHINGTON, ARKANSAS, *Dec'r 19th*, 1851.

We, Maria Gaines, wife of Wm. H. Gaines, late Maria Belding, Albert Belding, Henry Belding, and George Belding, heirs and

legal representatives of Ludovicus Belding, deceased, of Hot Spring County, Arkansas, do hereby apply to purchase the southwest quarter of section thirty-three (33) in township two (2) south of range nineteen (19) west, as containing one hundred and sixty acres, for which we have agreed with the register acting under instructions from the Commissioner of the General Land Office, bearing date 25th of Nov., 1851, to give at the rate of one dollar and twenty-five cents per acre.

A. BELDING,
MARIA BELDING,
HENRY BELDING,
GEORGE BELDING.

I, William H. Etter, Register of the ——— at Washington, Arkansas, do hereby certify that the tract above mentioned is sold as containing one hundred and sixty acres as mentioned above, and the price agreed upon is one dollar and twenty-five cents per acre.

WM. H. ETTER, *Register*.

Note.—In accordance with instructions, I note the interference of this entry with the New Madrid location of Langlois, of its embracing land directed to be reserved by the act of 20th of April, 1832, and that the entry is permitted to be made under the decision of the Secretary of the Interior of 21st November, 1851, transmitted to this office by the Commissioner of the General Land Office, under date of 25th Nov., 1851.

WM. H. ETTER, *Register*.

REGISTER'S OFFICE, WASHINGTON, *January* 19, 1852.

I, William H. Etter, Register of the Land Office at Washington, Arkansas, do here certify that the foregoing pages contain a true copy of the letters received from the Commissioner of the General Land Office, the application filed and the annotation on the tract book in this office under said instructions.

WM. H. ETTER, *Register*.

To the reading of which said papers and documents in evidence to the jury, the defendant objected, and the court overruled the objection, and permitted the same to be read, to which ruling of the Court defendants excepted and asked and obtained time to file their bill of exceptions at a future day of this term.

Whereupon the plaintiffs proved by Lawson Runyan and by the record of marriage certificate in Hot Springs County, the marriage of Wm. H. Gaines and Maria Belding, before the institution of this suit, also by said witness proved that defendant Mills was at the commencement of the suit, and defendant Butler now is in possession of the premises described in the second count of the declaration, to wit, S. W. quarter of section 33, T. 2 S., range 19 west, and that the possessions of defendant were bounded on east by the stage road, on the north by the possession of Henderson D. Flowers, south by Sumpter's premises and George Belding's store, and west by the mountains as described in the second count of said declaration. The

plaintiff then asked said witness what the rent of said premises would be worth per annum, and since the commencement of this suit, to which question objected. The court overruled the objection and permitted said witness to answer the same, to which defendant excepted and asked and obtained time to file their bill of exceptions during the present term.

The said witness then stated that the storehouse and dwelling-house were worth 182 dollars per annum; said witness stated that Mrs. Butler took possession of said premises in the spring of 1855, bought from Mr. Mills. Mr. Mills occupied the premises some six months or more after the suit was brought before Mrs. Butler took possession.

The plaintiffs here closed their testimony.

The defendant then offered and proffered to make certain proofs taken before the Register and Receiver at Washington, Arkansas, duly certified by said register, after having first proven the hand writing of the register to be genuine; in relation to the pre-emption claim of John Perciful, in the words and figures following, to wit:—

HEMPSTEAD COUNTY,

State of Arkansas, sct.

Depositions of witnesses produced before the register and receiver of the land office at Washington, Arkansas, in support of the pre-emption claim of John Perciful, dec'd, on this 20th day of January, A. D. 1851.

Mr. David Basset first being duly sworn, testifies and says as follows, to wit:—

I have seen Silas Dod, but have no particular acquaintance, and believe him to be dead. I did know Thomas Holman, and believed him to be dead. I did also know Warren Dunham and believe him to be dead. Mrs. Perciful, Holman, and Dunham, did reside in the neighborhood of the Hot Springs. I know of their residing there. I don't recollect at what time they died, but they did reside in the neighborhood up to the time of their death. They have been dead for a number of years. I am at a loss to know at what time they did reside there. They were there in 1828 and 1829. I believe I came there in February, 1828, and found Mr. Holman, Mr. Dunham, and Sarah Perciful, were then residing in the neighborhood of the Hot Springs. I am acquainted with the character of Mr. Dunham (Difference of opinion expressed with regard to the admissibility of testimony regarding the character of Mrs. Perciful, by the register and receiver, consequently the testimony is admitted. The receiver objects on the grounds that there has been no attempt made to invalidate the testimony of Mrs. Perciful, Mr. Dunham, or Holman, in that the register and receiver know neither of the parties. The register and receiver admit that they know nothing of either of the parties, whether living or dead). I am acquainted with the character of Sarah Perciful, and know it to be good for truth and veracity,

and worthy of belief on oath. I am also acquainted with the character of Warren Dunham and Mr. Holman, and know them to be men of truth and veracity, and know them to have been worthy of belief on oath. I know but little of Mr. Dod, therefore cannot tell respecting his character.

Signed, DAVID BASSETT.

Sworn to and subscribed before me, this 20th day of January, A. D. 1851. B. F. HEMPSTEAD, *Rec'r.*

And also at the same time and place appeared Samuel Sorter, and first being duly sworn testifies as follows, to wit:—

I am the person whose testimony was taken heretofore in support of the Hot Spring pre-emption claim in the name of Ludovicus Belding. I was acquainted with Mr. Belding. I do not recollect at what time I became acquainted with him (Warren Dunham), but did know him to reside at the Hot Springs in A. D. 1835, and was acquainted with him from thence up to the time of his death. He resided at and in the neighborhood of the Hot Springs. During my acquaintance with him, and up to his death, he possessed a good character as far as I know, and was worthy of belief upon oath. I was acquainted with Thomas Holman. I first knew him at the Hot Springs about the year 1829. I knew him till his death. I always understood him to be a good man, and I would believe him under oath. I did not know Silas Dod. I have heard of a person of that name who was said to be a preacher in the neighborhood of the Hot Springs. Have known Mrs. Perciful from 1829 until her death, and should consider her worthy of belief on oath. I believe her to have been a good woman and worthy of belief on oath.

And further he sayeth not.

SAM'L SORTER.

Sworn to and subscribed before me this 20th day of January, 1851. B. F. HEMPSTEAD, *Rec'r.*

And also at the same time and place appeared Abner Hignight, and first being duly sworn testifies as follows, to wit:—

I was acquainted with Silas Dod. I first knew him at what is called the Warm Springs landing on the Ouachita, he went out then and attended the Springs. He was there, and I was living at Mr. John Perciful's at that time; that was in 1812. I think I was acquainted with him (Mr. Dod) more or less until his death. I knew nothing against his character for truth and veracity, and would certainly believe him under oath.

Cross-examined by Henry M. Rector.

I do not know that I have ever seen the depositions of Mr. Dod, heretofore taken. But I do not know the substance of his testimony.

And further the deponent says not.

ABNER HIGNIGHT.

Sworn to and subscribed before me this 20th day of January, 1851. B. F. HEMPSTEAD, *Rec'r.*

And also at the same time and place appeared William Davis, and first being duly sworn, testifies as follows, to wit:—

I was acquainted with Warren Dunham in his lifetime, and also with Thomas Holman and Mrs. Sarah Perciful. Used to be acquainted with Silas Dod, but cannot tell when. Ques. Were you acquainted with the character of Warren Dunham among his neighbors for truth and veracity? Ans. I was. From his character among his neighbors, would you believe him under oath? Ans. I should. Were you acquainted with the character of Thos. Holman among his neighbors for truth and veracity? Ans. I was. From his character among his neighbors, would you believe him on oath? Ans. I would. Were you acquainted with the character of Mrs. Sarah Perciful among her neighbors for truth and veracity? Ans. I was. From that acquaintance would you believe her under oath? I certainly should. I lived a neighbor to her for little upwards of twenty years. Were you acquainted with the character of Silas Dod among his neighbors for truth and veracity? I cannot say that I was particularly, but have seen him several times. I knew the man many years since in Magny Cove. And further he says not.

his
WILLIAM × DAVIS.
mark

Sworn to and subscribed before me this 20th Jan'y, 1851.
B. F. HEMPSTEAD, *Rec'r.*

And also at the same time and place appeared Jonathan Irons, and first being duly sworn, testifies as follows, to wit:—

I was acquainted with Warren Dunham in his lifetime, and also with Thos. Holman and Mrs. Sarah Perciful. Were you acquainted with the character of Warren Dunham among his neighbors for truth and veracity? I was. From his character among his neighbors would you believe him on oath? I should.

Were you acquainted with Thos. Holman's character among his neighbors for truth and veracity? I was. He was said to be a truthful man. Would you believe him on oath? Yes. Were you acquainted with the character of Mrs. Perciful for truth and veracity among her neighbors? I was. From that acquaintance would you believe her under oath? Yes, I would. Were you acquainted with the character of Silas Dod among his neighbors for truth and veracity? I was, slightly. From that acquaintance would you believe him under oath? Yes, I would. How long have you known the above-mentioned persons previous to their deaths? I cannot tell when they died, but became acquainted with them about the year 1825 or 1826. And further deponent says not.

JONATHAN IRONS.

Sworn to and subscribed before me the 20th Jan'y, 1851.
B. F. HEMPSTEAD, *Rec'r.*

And also at the same time and place personally appeared William C. Kelley, and first being duly sworn, deposes as follows, to wit:—

I was acquainted with Warren Dunham in his lifetime. I was also acquainted with Thos. Holman and Mrs. Sarah Perciful. I was not acquainted with Silas Dod; I never saw him. Were you acquainted with the character of Warren Dunham for truth and veracity among his neighbors? His truth and honesty was not relied on, I think, among his neighbors, in some instances. Were you acquainted with the character of Mrs. Perciful for truth and veracity among her neighbors? Very well; she was a first-rate lady—as good as Arkansas contains. From that acquaintance would you believe her upon oath? Yes, I would. Were you acquainted with the character of Thomas Holman for truth and veracity among his neighbors? I have been acquainted with Mr. Holman; we were raised from boys together. I think him a truthful and reliable man. From this acquaintance with him would you believe him under oath? Yes, I should think his testimony ought to be good. And further deponent says not.

his
WILLIAM × C. KELLY.
mark

Sworn to and subscribed before me this 20th Jan'y, 1851.
B. F. HEMPSTEAD, *Rec'r.*

Also at the same time and place personally appeared Richard C. Hawkins, and first being duly sworn for the purpose, deposes and says as follows, to wit:—

Ques. Were you acquainted with Thomas Holman and Warren Dunham? I was. Were you acquainted with the character of each among their neighbors? So far as I knew the men, they were considered creditable men. From this acquaintance would you believe them when under oath? I certainly should in any case where they were not directly interested.

Cross-examined by Henry M. Rector.

Have you ever seen the deposition of Mr. Holman? Yes, I saw the depositions of Mr. Holman this morning. Did Mr. Holman ever tell you that the facts were different from what they are stated in said depositions? Yes, Mr. Holman has frequently told me the facts were different from what they are stated to be in his said deposition. What was his statement about the facts? So far as my recollection serves me, Mr. Holman told me that he was quite a youth at the time the improvements were made at the Springs; but he informed me that the first improvements were made by a Frenchman about the years 1811 and 1812, and that they occupied them about this time; and when he went away he sold his improvement to John Perciful. Mr. Holman has told me frequently that Mr. Perciful had camped and hunted at the Springs for several years, but that the first houses and cultivation at the said Springs were by a Frenchman (whose name I do not recollect), and when he left he gave or

sold his improvements Mr. John Perciful. This was about or within the years 1811, 1812, or 1813. Ques. Did Holman in any of these conversation ever tell you where he (Perciful) lived about that time? He told me that he lived near the Gulpha, on the Ouachita River, at that time—say from 1811 to 1813. What time did Holman tell you that Mr. Perciful came to reside at the Hot Springs? Ans. He told me that Mr. Perciful never did permanently reside and cultivate at the Springs until 1815. Did Mr. Holman ever tell you that he had ever been a member of his (Mr. Perciful's) family? Ans. I do not recollect that he did.

Quest. on the part of the of Perciful.

Did Mr. Holman tell you that the facts in his deposition were not correct, or do you mean to say that what he told you were facts different from those stated in the deposition? I have not seen Mr. Holman since he made the deposition, nor for years before. What he told me was between 1829 and 1832, whilst I was living at the Hot Springs. And further he says not.

RICHARD C. HAWKINS.

Sworn to and subscribed before me, on the 20th of Jan'y, 1851.

B. F. HEMPSTEAD, *Rec'r.*

Testimony introduced at the same time and place on the part and behalf of Henry M. Rector. And also appeared at the same time and place as aforesaid, Jacob Barkman, who being first duly sworn, deposes and says as follows, to wit:—

Ques. Were you acquainted with Mrs. Sarah Perciful, the wife of John Perciful, deceased, the claimant of said Hot Springs? Ans. I was acquainted with her before her marriage, and have been acquainted with her since. Do you know when she came to the Hot Springs in Arkansas? I think it was in the fall of the year 1813 or 1814. Were you acquainted with Warren Dunham? Yes. Do you know when he came there? I think about 1814 and 1815. Did you ever have any conversation with him about the claim of Perciful to the Hot Springs? Yes; frequently. Warren Dunham lived with me one or two years; in the course of that time we had several conversations relative to Mr. Perciful's claim to the Hot Springs. The understanding between me and Dunham was, that Perciful never had any claim to said Springs. We considered that Perciful never lived at the Springs until the year 1819. He lived there during or part of the year 1819, and kept a boarding house, but do not recollect of his cultivating at the time. During my acquaintance with Mr. Perciful he went and resided upon Red River two years. I remember nothing more of the conversations between Dunham and myself. Were you acquainted with Silas Dod? Yes. Did you ever have any conversation with him relative to Mr. Perciful's claim to said springs? I do not now recollect of any.

Cross-questioned on the part of Perciful.

Ques. At what time did Mr. Perciful remove to Red River? I think in or about the year 1816. Do you know anything about the character of Silas Dod among his neighbors for truth and veracity? I do not know anything about his character in this respect. In some things I think his character good, and in other things good for nothing. He was a harmless, ignorant man, he might do good, or not do good.

Quest. on part of Belding.

How long have you been acquainted about the Springs? I think from June or July 1812 or 1813 until about two years since. I have frequently been there during the last twenty-four years. I have, however, been very little about said Springs. At what distance have you lived from the Hot Springs since 1812? Ans. About 35 miles. And further deponent says not. J. BARKMAN.

Sworn to and subscribed before me, this 20th day of Jan'y, 1851.
B. F. HEMPSTEAD, *Rec'r.*

Also at the same time and place appeared Mr. Charles Rapley, who, by consent of parties, was examined in chief on the behalf of Henry M. Rector, and being first duly sworn, deposes and says as follows, to wit:—

In the summer of 1833 I was in bad health and went to the Hot Springs for the benefit of the same. Mr. Physick was keeping a public house at said Springs at the time. Finding my health did not improve after being there some weeks, I was advised to go and stay at Mr. John Perciful's, on the Ouachita River, at which place I spent some time. I think this was in August of the year 1833. Whilst there I had frequent conversations with him (Mr. Perciful) in relation to his manner of living when he first came to the country. He informed me in speaking of his first coming to the country that he came for the purpose of hunting, that he visited the territory. I am not positive as to the date, but I think he said about the year 1811 or prior. That he was absent from the country for some time and returned. I am not certain whether he said in 1812 or 1813, but somewhere about that time. I asked him what his occupation was during that period, he replied it was hunting, principally. He used frequently to narrate his buffalo hunts, &c. I asked him how he lived, and he replied he moved about from one place to another, living in a camp. He told me he settled the place where he then lived on the Ouachita River in 1813 or 1814, but am not certain which, and that he had lived there and cultivated from that time up to the period when I was there. Where he then resided was some six or eight miles from said Hot Springs.

I have been frequently at the Springs since 1833, but was never there before that time. But I have never seen anything like culti-

vation there. The land about the Springs is very sterile and rocky. And further he says not. CHAS. RAPLEY.

Sworn to and subscribed before me this 20th Jan'y, 1851.
B. F. HEMPSTEAD, *Rec'r.*

Whereupon this investigation was adjourned until to-morrow.

Tuesday morning, Jan'y 21st, met pursuant to adjournment, and proceeded to the investigation of the pre-emption claim of John Perciful.

Examination in chief opened.

Deposition of Sarah Perciful offered in evidence; its reception objected to by Henry M. Rector, and the representatives of Ludovicus Belding, dec'd.

The opinion of the receiver is that the deposition of David and Sarah Perciful shall be received simply as a *notice* of a pre-emption claim, and are rejected by him as evidence.

The register is of opinion that the said depositions should be received for what weight they are entitled to.

Protest of Henry M. Rector against any action of the land officers in the pre-emption claims of Perciful and Belding, entered by consent of parties as of yesterday morning, 20th inst.; and which protest is here referred to as paper A, No. 1.

The deposition of Thomas Holman, offered and received by the register and receiver for what they are worth. Also the deposition of Warren Dunham offered and likewise received by the land officers for what they are worth. Objections are offered to the reception of both Holman's and Dunham's deposition on the part of both Rector and Belding.

The deposition of Silas Dod offered, and objected to by Rector and Belding, but received by the land officers for what they are worth.

The depositions of James Neel, and Thomas Woodward offered, and objected to on the part of Rector and Belding, on the grounds that they both are now living, and reside in this State, within seventy miles of this place.

Depositions of John C. Hale offered, and objected to by the other parties, on the ground that he is now living, present, and acknowledges himself interested. All copies of deeds, leases, and conveyances furnished by the General Land Office to the Register and Receiver, to be received and considered for what they are worth.

The depositions of Fullerton and Runyan offered, and objected to by Rector and Belding, on the grounds that they both are still living near the Hot Springs in this State.

All the above mentioned deeds, leases, &c., are received by the register and receiver for what they are worth.

The testimony on the part of the legal representatives of John Perciful, dec'd, is here closed.

Whereupon Henry M. Rector introduced the following testimony

in opposition to the claim of the legal representatives of John Perciful, dec'd.

Jacob Barkman, a witness on the part and for the party aforesaid, being duly sworn, deposes as follows, to wit:—

Ques. At what time did you come to this country? Ans. I came here in 1812, on the 7th day of January. I landed from the Ouachita River. What time were you at the Hot Springs? I think it was in June, 1812. How long did you remain there at that time? I think about two or three days. Were there any improvements there at that time, and if so, what character were they? Ans. There were a few houses, not exceeding a half a dozen; there were also some camps and tents there. What description of houses were there? Ans. They were log cabins, small, and of little value. Were there camps there at that time? There were. Who were in the possession of them at that time? Ans. They were in the possession of various individuals who came there to attend the Springs. Were there any Indians about there in the vicinity at that time, or some two or three years thereafter? Ans. There were some who came to attend the Springs, but not many. Of what tribe of Indians were these? Ans. I do not recollect, they were as likely to be Choctaws as any, for the Choctaws were in this country at that time. Do you recollect the names of any of those individuals who were there during the summer of 1812? Ans. I recollect a person by the name of Fitz Gibbons, also two brothers of the same, and his mother. Were they in possession of those houses, or in camps, or how did they live? Ans. They lived in what I should call a camp. How long did those individuals remain there? They were there a part of two years, during the summer seasons of 1812 and 1813, and I do not know but in the summer of 1814. Did any of those visitors at the Springs stay there a whole year? Ans. There was a man by the name of Gray, who did stay there the winter of 1814 or 1815. Were the Fitz Gibbons residents of Louisiana, or Missouri Territory? Ans. Gray came from Louisiana, but the Fitz Gibbons came from, I know not where. Did you, when there, go over across a little branch where the garden is now situated, &c.? Ans. Yes, I have been all around there, and upon the mountain also. Was there any cultivation there in 1812, when you were there? Ans. The Fitz Gibbons had a little patch cultivated as a garden, I think on the northeast side of the branch. What was the extent of this cultivation? Ans. It could not have exceeded an eighth of an acre, if it was that. How was that inclosed? Ans. I cannot recollect how it was inclosed. Were you there again in the summer of 1813? Ans. I was. The character of the improvements were the same as on the previous year, or were different? Ans. There was a little difference; a few additional cabins were erected. You saw no other cultivation in the years of 1812 and 1813, excepting what you have mentioned? I recollect of none. Do you recollect of any additional names of persons in 1813, than those mentioned? Ans. There was a Mrs. Foster, and

I think one of the Lovelaces, who came there during that year. Did you ever know John Perciful, the person whose heirs and legal representatives are now claimants for said Springs? I did, I became acquainted with him in the year 1809. Where did you see him at that time? Ans. I first saw him in New Orleans. When next did you see him, and where was it? Ans. I saw him next on Black River, in Louisiana, in *in* the fall, in the latter part of the year 1809. Where and when did you next see him? Ans. I saw him next, at what is called the Hot Spring landing, on the Ouachita River. Did you say what year this was? Ans. It was in 1812, in the month of June, I think. How came Mr. Perciful at this place at this time? Ans. He had a farm there at the Ouachita landing, just below the mouth of the Gulpha, six or eight miles from the Hot Springs. What was the character of that farm? Ans. He had a house, and five or six acres in cultivation, and under fence. That was in *That was in* 1812. Were you there again in 1813? Ans. I was. Was Mr. Perciful there then? Ans. Yes, he resided there at that time. Were you ever at Mr. Perciful's after 1813? Ans. Yes, several times in 1814. I took the boat up there in May, or the early part of June; this was *this was* the first time. I went up in 1814; the *the* next I went up with Mr. Foster and his family. Mr. Perciful was living on his farm at the river, both times. How much time did you spend at the Springs in the aggregate, during that summer? Ans. I think the last time I was there, I spent eight or ten days. This, I think, was in September. Do you recollect of seeing Mr. Abner Hignight at that time, at Mr. Perciful's? I think I saw him there, but did not become acquainted with him. Did you see Mr. Perciful at the Springs during the years 1812, 1813, and 1814? I think I did see him there during those years, and that he went there for the purpose of furnishing venison, and other things to the invalids there. Did Mr. Perciful live, and cultivate at the Springs, in 1812 or 1813? Ans. I do not think I ever saw anything like cultivation by him there during those years, or in 1814. You say you were there in 1814? Yes, I do not think he lived there in 1815, and not until 1819. I was several times at his farm on the Ouachita, after 1815. I was at the Springs, and staid with Mr. Perciful, with my wife, in 1819, and boarded with him, I think seven or eight days. How do you understand that Mr. Perciful originated his claim to the Hot Spring? Ans. He went there for the purpose of keeping a boarding house, and said that it was a great place, and if he had money sufficient to make improvements, it would be a great place to make money. Likewise, I asked him about the houses he was keeping in 1819. He told me they were left in his charge to take care of, by a man by the name of Manuel Prudhomme, as near as I can recollect, who had left there for his residence, near Nachatoch, where he then resided. After that (1819), I was very little about the Spring. I think I was there in 1828 afterwards, but am not positive as to time. What is the character of the country about the

Springs for cultivation? Ans. It is of very little account, but little being fit for cultivation in the immediate vicinity of the Springs. This is just above the Springs. Did Perciful say anything about his claim to the Springs at the time you were there in 1819, and conversed with him? Ans. He did not, as far as I recollect. In 1813 and 1814, Mr. Foster had a small garden across the branch above the Springs on the northeast side of Hot Spring Creek, between said creek, and the mountain. Perciful did not live or cultivate at the Springs in 1812, 1813, or '14, and I do not think he did in 1815.

Cross-examined on the part of Mr. Belding's heirs, &c.

Ques. Did Mr. Foster, the gentleman you spoke of having a garden there, seem to be a permanent settler there, or merely as a visitor? Ans. Merely as a visitor. Did Foster remain there all the year, or only come there during the summer? Ans. Only during the summer seasons; they spent the summer of 1813 and 1814 there. You say he attended the springs for the benefit of his lady's health. Ans. Yes. In 1812, 1813, 1814, and 1815, were any persons permanently settled there? Ans. There was none as I recollect of; all those there I understood were there for the purposes of benefiting their health. Did Fulsom have a house at the lower part of the valley? Ans. He had a house there but resided at the Ouachita River above the mouth of the Gulpha. Did all those persons who were at the springs in 1814, support themselves, or board there? Ans. They boarded themselves, I think, there.

Ques. by Rector. Did any of those persons there in 1812, 1813, and 1814, set up any claim to said springs? Ans. No one did that I know of. Did Perciful live there the whole of the year round of 1819? I did not know of any person living there prior to 1819, excepting a Mr. Gray. Did Perciful spend the whole of the year of 1819 at the springs? Ans. I think not, it is my understanding that he went back to the river after the visitors left in the fall. Who was the first person within your knowledge who permanently lived at the springs? Ans. I do not know who was the first person who lived at the springs during a whole year. Were you there during the year 1828, 1829, and 1830? I do not recollect when I was there, but I think it was in or about 1828. I did not see Mr. Belding there when I was there. Can you state how far above the upper spring this piece of tillable land cultivated by Foster, as mentioned is? I suppose from 50 to 80 yards above the Hot Springs.

Cross-examined by the representatives of Perciful.

Ques. In 1812, when you spoke of being at Perciful's place at the mouth of the Gulpha, was he a married man? Ans. He had no wife and children there that I know of. How often were you at the Hot Springs in 1811? Ans. I was not there at all. How often were you at the Hot Springs in 1812? I do not recollect that I was there more than once in 1812. How often were you there in 1813? Ans. I was there probably two or three times, but do not

recollect precisely how many times. Did Perciful remain in the vicinity of the Hot Springs from 1812 to '15, or remove from the place? He remained in the vicinity of the Hot Springs, and did not remove. Did the persons at the Springs in 1812, 1813, and 1814, board themselves? Ans. They pretty generally carried their own provisions there, or obtained them by hunting. Some had hunters; and Mr. Perciful hunted for some.

Who was in possession of the Springs the first time you visited them after 1819? Ans. I do recollect.

And further deponent says not. J. BARKMAN.

Sworn to and subscribed before me, this 24th day of January, A. D. 1851. B. F. HEMPSTEAD, *Rec'r.*

At the same time and place appeared Mr. Abner Hignight, who being first duly sworn, deposes as follows, to wit:—

Ques. When did you first come to the Territory of Arkansas? Ans. I think it was in 1810, but might be in 1811. I am not certain which it was. What part of the country did you first stop at? Ans. At Stephen's salt works on the Ouachita River. Do you know whether it was in 1810 or 1811? I am inclined to think it was in 1811. How long did you remain at the salt works? Ans. I had been knocking about there for some time, say two or three months. To what part of the country did you go when you left the salt works? Ans. I went up to Mr. Perciful's, on the Ouachita River. Do you recollect at what time of the year it was when you arrived at Perciful's? I do not recollect at what time it was. How long did you live with Mr. Perciful on the Ouachita River? Ans. I staid there one or two years, making that my home. How far is that place at which you staid from the Hot Springs? Ans. About 7 miles. Do you know whether this John Perciful is the same man whose heirs are now claiming the Hot Springs? He is the same man as I understand. Do you say that there was the residence of Mr. John Perciful? Ans. Yes. Are you able to state in what year it was that you left Perciful's house? Ans. I think it was in the latter part of the year 1813. Were you at the house the next year, or the year following? Ans. I think the next time I was there was in 1815. Was Mr. Perciful living there at the original place then? Ans. He was, and was married, I think. What sort of a place was that as regards cultivation and improvements? Ans. When I first went there he had five or six acres cleared and under fence. There was a small house or cabin. Was that far increased or enlarged when you were there? Ans. Perciful hired me to clear him five acres adjoining the other cleared land, he also hired me to make him 2000 rails. I hired a man by the name of Morrow to clear about three acres for Perciful, all adjoining the other cleared land. I was instructed so to do by Perciful. This was in 1812. I done some of the work in 1811, and finished it in 1812. Was the ground in cultivation when you were there? It was cultivated with corn and

potatoes. Did you assist Mr. Perciful in the cultivation of that ground? Ans. Very little. Who did cultivate it? Ans. Mr. Perciful. He would sometimes hire work from others, and pay in buffalo meat for the same. After you left in 1813, when did you return. Ans. In 1815. Is that the same place on the Ouachita where Mr. Perciful continued to live until he died? Ans. It was the same place. Do you recollect the year in which Mr. Perciful died? Ans. No, I have no knowledge. Were you at the Hot Springs in 1811, 1812, and 1813, while you lived with Perciful? Ans. I was, frequently. What was the extent of the improvements at the Hot Springs when you first visited them, at the time you were living at Perciful's? Ans. There were a few "half faced" camps; in 1813 Manuel Prudhomme and his brother built a chunk of a house there; this was in the summer of 1812 or 1813, I won't be positive which. What sort of camps were those you speak of? They were what are called "half faced" camps. Where abouts in the valley did these Mr. Proudhomme's build the houses you speak of? On the west side of the creek and opposite the main spring in the valley. Did you see any cultivation at the springs when you lived with Perciful? Ans. There was a little piece of ground, I think, about a fourth of an acre, situated a northeast course 60 or 80 yards from the main spring directly under the mountain. He (Morrow) had some lettuce, water melons, &c., cultivating there. This is all I can recollect of. How was that garden enclosed? There was two strings of bush fence, and one side was fenced by the mountain, forming a sort of three sided piece of ground. Was there any other cultivation that you saw there during the years of 1812 or 1813, excepting this piece spoken of? Ans. There was none. Did Mr. Perciful cultivate any ground at the springs himself at this time? Ans. Never while I staid with him. Did he live at the springs himself at any time while you staid with him? He never did live there while I staid with him. What were the relations that existed between you and Mr. Perciful at that time, and so on up to his death? Ans. We were like brothers all the time. Did Mr. Perciful leave that part of the country at any time and remove to Red River? Ans. Yes, I met him moving, and he informed me that he was going to Long Prairie on Red River. Do you recollect in what year he went, and in what year he returned from Red River? Ans. I think he went in 1816, and remained something like two years and returned. Did you see him on his return, and when did you see him? He stopped with me on his return for two or three days. I then lived on Stroud's Creek in Clark County, in this State. How was it according to your understanding that Mr. Perciful set up a claim to the Hot Springs? He told me that he wanted to improve them and let them get a name out that they might be valuable. How did he found his claim thereto? The people looked up to him as the proprietor, because he furnished the provisions, bread-stuff, and meat for those who did not want to kill it. Perciful, Cates, and Fulsom,

all helped to furnish provisions, &c. When did Mr. Perciful first live and cultivate at the springs? Ans. Never, that I know of. I was there in the summer after Mr. Perciful returned from Red River in March, and have not been there since. I did see Mr. Perciful at the time I was at the Hot Springs last, and have never seen him or his wife since they stopped at my house in Clark County, on his return from Red River.

Cross-examined on the part of Belding's Heirs.

Ques. Did Mr. Perciful take his family and property, beds, &c., with him when he removed to Red River? Ans. He had both his family and goods, and I observed two mill-stones on an axle-tree, with a horse harnessed to them.

When you returned to Mr. Perciful's, on the Ouachita River, in 1815, did his farm appear as if it had been cultivated during the previous year? Ans. It did.

Cross-examined by the Legal Representatives of John Perciful.

Did Mr. Perciful, in those conversations which you spoke of having with him in the years 1811, 1812, and 1813, in relation to his claim to the Hot Springs, say that the camps or cabins were his, and that the visitors came by his consent? Tell us all that he said, in these conversations, as near as you can recollect. Ans. In consequence of his doing so much for those invalids who came there, Mr. Perciful deemed that he had a claim to the Hot Springs, for he used to furnish those who had no money with provisions, as well as those who had money. And when visitors left there, they used to give up to him their camps, &c., considering him the proprietor of the Springs. Did he not also say, in said conversations, his object in clearing land upon which you say he lived was to furnish corn and other provisions to visitors at the Springs? Ans. Yes; he said it was for this purpose, that he might furnish supplies for the visitors at the Springs. At what season of the year did visitors usually attend the Springs? Ans. In the spring and summer, until the weather became too hot. Was John Perciful married or single in the years 1811, 1812, and 1813? Ans. If he was married I did not know it; he had no wife with him. Is Long Prairie on Red River, into which he (Perciful) said he was removing, in Arkansas? Ans. I do not know whether it is or not.

And further he says not. ABNER HIGNIGHT.

Sworn to and subscribed before me this 21st Jan'y, 1851.

B. F. HEMPSTEAD, *Rec'r.*

This investigation is here closed until to-morrow, A. M., Jan'y 21st, at 9 o'clock.

B. F. HEMPSTEAD, *Rec'r.*
W. H. ETTER, *Reg'st'r.*

January 21st, at 9 o'clock A. M.

B. F. HEMPSTEAD, *Rec'r.*
W. H. ETTER, *Reg'st'r.*

Wednesday morning, January 22d, 1851, met at 9 o'clock, and proceeded in the investigation.

And at the same time and place appeared Bernard Bonne, who, being first duly sworn deposes as follows, to wit:—

Ques. Do you recollect at what time you came to this country? Ans. In 1804. How old a man are you? Ans. Fifty-seven. Did you ever know a man by the name of Mitchell Bonne? Ans. Yes; he was my father. Is he the man who made the trace from about Pine Bluff to the Hot Springs, called "Bonne's Trace?" Ans. Yes. What part of the country did you stop at when you first came to this country? Ans. Two miles above Pine Bluff. Did you ever live at the Post. Yes; I have been raised at the Post. Were you ever at this place before? Yes; I was here twenty-seven years ago. Were you ever at the Hot Springs? Yes. When were you first there? Ans. In Oct'r, in 1813. Were there any people at the Springs then? Ans. None. Any Indians? Ans. None. Who did you go to the Springs with? Ans. With my two brothers, Joseph and Mitchell, and my father. Where did you come from there? From two miles above Pine Bluff. What did you go there for? Ans. To hunt bear, beaver, and buffalo. Did you see any houses there? Ans. I saw no houses, but some three houses had been burned, and I saw some camps there, made of poles. Did you see any field under cultivation there? Ans. I saw none, and had to cut away the briars and bushes with my knife, in order to get to the Springs. Did you see Mr. Perciful at the time you were there? Ans. I saw him at the Ouachita River. How far from the Springs? Ans. Seven or eight miles. Where did he live then? Ans. On the bank of the Ouachita River, where I saw him. Did Mr. Perciful have a house there? Ans. He had a log house there. Did you trade any with Perciful at the time you saw him? Yes; I bought sugar and coffee, and paid him two beaver skins in exchange. When was the next time you were at the said Springs? Ans. On the 15th day of May, 1814. Were you at the Springs then? Yes. Who went with you at this time. Ans. Charles Rafeld, his wife, and two children, one a girl aged seventeen or eighteen. What did you go there for then? Ans. To take Mr. Rafeld's sick daughter to the Springs for her health. How did you go there? Ans. On pack horses. How long did you remain there? Ans. I went from there with my father and two brothers, and two Quapaw Indians, to the Little Missouri River, to hunt, and returned to the Springs in the last of June, being absent from there about one month. Were there people there at that time? Ans. Yes; there were some 40 or 50 from Nachitoch there, and some of them built houses. Did you see Mr. Perciful there at that time? Ans. I did not, but saw Mr. Fulsom there. Where did Mr. Perciful live at that time? Ans. On the Ouachita River, where he lived before. What kind of a place did Mr. Fulsom have at the Springs at this time? Ans. He had a kind of cabin, built of poles about the size of my arm, and a pen,

where he kept three cows, to furnish milk for the visitors. Where did Fulsom live at this time? Ans. He lived on the Ouachita River, above the Gulpha, about three-quarters of a mile from Perciful's. Were you at his house? Yes. Did he have a farm there? Yes; he had corn growing there. When was the next time you came there afterwards? Ans. I cannot recollect, I was there so many times; neither can I *saw* in what years I was there.

Cross-examined by Belding's Representatives.

Ques. Were the persons whom you saw at the Hot Springs in 1841 there mere as visitors or permanently settled there? Ans. They were there for their health, merely visitors. Of what nation are you? My father was a Frenchman, from France; I am part Quapaw—only a very small portion Quapaw.

Cross-examined on the part of Perciful's legal Representatives.

You say you cannot recollect the different years you were at the Hot Springs after you were there in 1814; can you tell how many times you were there after the year 1814? Ans. One time in 1833. I was there six times in all. Three of the times I cannot recollect the years in which I was there, as I passed there with some Indians. When you were at the Hot Springs in 1814, did you get acquainted with Sarah Ubanks, who was afterwards John Perciful's wife? Ans. I did not *not*. How long did you remain at the Springs when you were there in October, in 1813? Ans. I did not stop there at all. I only went to see the Springs, and returned immediately. How long did you remain at the Hot Springs when you were there in June, 1814? I stayed two or three days there when I went there with Rafeld and family, and went to the Little Missouri to hunt, where I remained about a month, and returned again to the Springs, where I staid two or three days, and returned again to Pine Bluff, where I then lived. It is about 80 miles from where I lived to the Hot Springs.

And further he saith not.

his
BERNARD × BONNE.
mark.

Sworn to and subscribed before me, this 22d Jan'y, 1851.

B. F. HEMPSTEAD, *Rec'r.*

At the same time and place appeared Richard C. Hawkins, who, being duly sworn, deposes and says:—

Quest. Did you know John Perciful, the man whose heirs are now claiming the Hot Springs, and where? I became acquainted with John Perciful about the first of the summer of 1829. Where did he live then? His residence was on the Ouachita, about 8 miles from the Springs. Did you ever have any conversation with Mr. Perciful about his claim to the Hot Springs? Ans. Often. Did you ever have any conversation with Mr. Perciful relative to his first settlement in the Territory of Arkansas? I have. What was that

conversation? Ans. Mr. Perciful told me that he and Isaac Cates came to the Hot Springs in the year 1807, and they remained at the Springs during that year, camped there, and hunted, and in the spring of 1808 he went to the Ouachita River, and settled there; and that he made the first bread that he ever had in the country with a wooden hoe, without any other implement to work with. He made this bread on the Ouachita, where he was then living.

And further this deponent says not.

RICHARD C. HAWKINS.

Sworn to and subscribed before me this 22d Jan'y, 1851.

B. F. HEMPSTEAD, *Rec'r.*

Henry M. Rector here offered the two previous rejections of the Perciful pre-emption claim in evidence, as contained in a duly certified copy from the General Land Office, to the reception of which the legal representatives of Perciful objected.

These objections are overruled, and the Register and Receiver receive the rejections for what they are worth.

Here closes the testimony on the part of Mr. Henry M. Rector.

Whereupon, neither of the parties in interest introducing *no* further evidence either for or against the claim, the same was submitted for the decision of the Register and Receiver.

WM. H. ETTER, *Register.*
B. F. HEMPSTEAD, *Receiver.*

RECEIVER'S OFFICE, WASHINGTON, ARKANSAS, *Feb'y 10th*, 1851.

Upon examination of all the testimony of the legal heirs of John Perciful, deceased, for a pre-emption on the southwest quarter of section No. 33, in township No. 2, south of range No. 19 west, known as the Hot Spring tract, I find, 1st. That John Perciful did actually inhabit and cultivate the tract of land above described on and prior to the 12th of April, 1814. 2d. Second, that his legal heirs or representatives are entitled to enter the same under the provisions of said pre-emption law of 12th April, 1814, at the minimum price of $1.25 per acre. B. F. HEMPSTEAD, *Rec'r.*

REGISTER'S OFFICE, WASHINGTON, ARKANSAS, *Mar. 5th*, 1851.

Upon a careful investigation of all the testimony produced by the heirs and legal representatives of John Perciful, deceased, in support of a pre-emption claim of to the southwest quarter of section thirty-three (33), in township two (2), south of range nineteen (19) west of the fifth principal meridian, and known as the tract of land upon which the Hot Springs, in the State of Arkansas, are situated, as well as the testimony produced adverse to said claim, I am clearly of the opinion that said heirs and legal representatives of John Perciful, deceased, having failed to establish actual inhabitancy and cultivation, as required by the act of 12th April, 1814, under which they claim, are not entitled to the benefit of pre-emption. The application to locate is therefore rejected.

WM. H. ETTER, *Register.*

REGISTER'S OFFICE, WASHINGTON, ARKANSAS, *Feb'y 7th*, 1852.

I, William H. Etter, Register of the Land Office at Washington, Arkansas, hereby certify that the foregoing twenty-five pages contain a true and correct copy of a certified copy from the original transcript of the testimony produced on the examination of this case before the Register and Receiver of the Land Office at Washington, Arkansas, and also a copy of the opinion of the Register and Receiver endorsed thereon, the original having been transmitted to the General Land Office. WM. H. ETTER, *Reg.*

To the reading of which the plaintiffs objected, the Court sustained the objection; to which ruling of the Court the defendants excepted, and asked and obtained time to file his bill of exceptions.

Defendant then proposed to read in evidence a petition of John C. Hale to perpetuate testimony, the order of the Judge of the Circuit Court of Hot Springs County, in the State of Arkansas, together with the dedimus, notices, and depositions of Thomas Woodward, Adam Stroud, James Neel, after having first proven that Woodwards and Neel lived out of the State, and that said Stroud had been subpœnaed, and that all of said witnesses were absent, which were in the words and figures following, to wit:—

To the Hon. John C. Murray, Judge of the Hot Spring Circuit Court, in the State of Arkansas.

Your petitioner, John C. Hale, would respectfully show unto your honor that he is one of the claimants of the southwest quarter of section thirty-three, in township two, south of range nineteen west, in the County of Hot Spring, upon which the Hot Springs are situated, under and by virtue of the pre-emption of John Perciful, dec'd, which quarter section is also claimed by Henry Rector, under a New Madrid location, and by William H. Gaines and wife, and the other heirs of Ludovicus Belding, dec'd, under a pre-emption, and your petitioner further shows that the said heirs of L. Belding, dec'd, have instituted an action of ejectment against your petitioner, in the Hot Spring Circuit Court, for said land, and judgment having been rendered against them, they appealed to the Supreme Court, where said suit is now pending.

Your petitioner would further show that if the said judgment should be reversed, and said cause remanded to said Circuit Court and tried anew, he may need the testimony of several witnesses who are now growing old, and may die before their depositions can be taken legally in said cause.

And your petitioner further shows that he believes and expects that he will be made a party to a chancery suit hereafter to be brought among said parties, in said Circuit Court, to settle the right to said land, and in which suit the validity of said pre-emption right of the said John Perciful, dec'd, under the act of Congress of 1814, will be impeached and involved, and your petitioner believes that the

testimony of Adam Stroud, Thomas Woodward, and James Neel will be necessary and vitally important to his right on the trial of said cause; and he therefore prays your honor to grant him a commission, according to the statute in such cases made and provided, to take and perpetuate their testimony in relation to said pre-emption.

By said Adam Stroud your petitioner believes he will be able to prove that the said John Perciful did inhabit and cultivate said quarter section of land for several years prior to the 12th April, 1814, and was in possession thereof at the passage of said pre-emption act, and that he never did remove from the Territory of Arkansas after his first settlement therein, which was prior to the year 1810.

By the said James Neel your petitioner believes he will be able to prove that he, the said Neel, resided in the vicinity of the said Hot Springs since the year 1812, and that he knows that said Perciful did inhabit and cultivate said quarter section of land now embracing said Hot Springs for several years prior to the 12th of April, 1814, and never did remove from said Territory of Arkansas.

By said Thomas Woodward your petitioner believes he will be able to prove that he visited said Hot Springs in the year 1816, and that he, the said John Perciful then occupied and lived on said tract of land, and that he boarded with him several weeks.

The said Stroud lives on the military road in Clark County, in this State, and the said Neel in Hot Spring County, and the said Woodward in Camden, Ouachita County, all in this State.

Your petitioner prays your honor to have commissions issued to take said depositions taken according to law, that they may be read by him in the trial of any case involving the title to said Springs and land, and particularly the pre-emption right of said John Perciful, dec'd, thereto, as aforesaid.

JOHN C. HALE,
By ENGLISH, TRAPNALL, & TRAPNALL.

HOT SPRING COUNTY.

I, John C. Hale, the petitioner aforesaid, do state that the facts set forth in said petition are true to the best of my knowledge and belief. J. C. HALE.

Subscribed and sworn to by s'd Hale before me this 15th day of January, 1853. L. RUNYAN, *J. P.*

HOT SPRING COUNTY.

I, John C. Hale, the petitioner aforesaid, do state that the facts set forth in said petition is true to the best of my knowledge and belief. J. C. HALE.

Subscribed and sworn to by the said J. C. Hale before me on the 5th of March, 1853. PHINEAS BARNES, *J. P.*

On examination of the foregoing petition of John C. Hale, I, as judge of the Hot Spring Circuit Court, do hereby grant the com-

mission therein prayed for, and the clerk of said Circuit Court is hereby required to issue a commission to any judge of any court of record, or to any two justices of the peace in the county of Clark, requiring such judge or justices to take the deposition of Adam Stroud, and that he also issue a commission to any judge or to any two justices of the peace in the county of Washita, requiring such judge or justices to take the deposition of Thomas Woodward, and that he issue also a commission to any judge of a court of record, or to any two justices of the peace in Hot Spring County, requiring such judge or justices to take the deposition of James Neel, the said John C. Hale first giving to every person who may be known to be interested at least twenty days' notice of the times and places of taking said depositions respect*fully*, and also delivering with every such notice a copy of the within and foregoing petition, and the clerk of said Circuit Court is hereby further required, immediately on the return of said depositions to his office, in his ex-officio capacity of recorder, to record them, and the papers and documents connected therewith, as required by law.

J. C. MURRAY,
Judge of the Hot Spring Circuit Court of Arkansas.

To Henry M. Rector, or Ebenezer Cummins, Esq., his attorney; William H. Gaines and his wife, Maria Gaines, formerly Maria Belding, Albert Belding, Henry Belding, and George Belding, the heirs-at-law of Ludovicus Belding, dec'd, or their attorney James M. Curran; take notice, that in pursuance of an order of John C. Murray, Judge of the Hot Spring Circuit Court for commissions to perpetuate the testimony, &c., and in conformity with a commission issued thereunder, a copy of which order and petition on which it was made being hereto attached, I shall proceed on the 7th day of October, 1853, between the hours of 8 o'clock A. M., and 6 o'clock P. M. of said day, at the office of John C. Hale (Justice of the Peace), in Hot Spring Valley, Hot Spring County, State of Arkansas, to take the deposition of James Neel, touching his knowledge of the matters and things set forth in said petition hereto annexed, to be read in evidence in the suits or controversies referred to in said petition (conditionally), when and where you may attend if you think proper. And the taking of depositions under this notice, if not completed on said day, will be continued from day to day at the same place and between the same hours until concluded.

Given this 3d September, 1853. JOHN C. HALE.
By E. H. ENGLISH, *Att'y.*

Served the within notice on Henry M. Rector in Saline County, September 6th, 1853, by handing him a true copy thereof, together with a true copy of the order and petition therein referred to and hereto attached. WM. A. CRAWFORD,
Sheriff of Saline County.

Mileage	60
Serving notice	50
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Served the within notice on W. H. Gaines and wife, Maria Gaines, Albert Belding, Henry Belding, and George Belding, heirs-at-law of Ludovicus Belding, deceased, by handing to James M. Curran, their attorney and agent, a true copy of the within notice, together with a true copy of the petition and order therein referred to and hereto attached. Done in Pulaski County, Arkansas, September 6th, 1853.

JOHN C. PEAY,
Sheriff Pulaski County, Arks.
By H. BROGAN,
Deputy Sheriff.

Sheriff's fees $\frac{50}{100}$

To the Hon. John C. Murray, Judge of the Hot Springs Circuit Court, of the State of Arkansas.

Your petitioner would respectfully show unto your honor, that he is one of the claimants of the southwest quarter of section thirty-three, in township two, south of range nineteen west, in the county of Hot Springs, upon which the Hot Springs are situated, under and by virtue of the pre-emption of John Perciful, deceased, which quarter section is also claimed by Henry M. Rector, under a New Madrid location, and by William H. Gaines and wife, and the other heirs of Ludovicus Belding, dec'd, under a pre-emption, and your petitioner further shows that the said heirs of L. Belding, dec'd, have instituted an action of ejectment against your petitioner in the Hot Spring Circuit Court for said land, and judgment having been rendered against them, they appealed to the Supreme Court, where said suit is now pending.

Your petitioner would further show that if said judgment should be reversed, and said case remanded to the Circuit Court and tried anew, he may need the testimony of several witnesses who are now growing old, and may die before their depositions can be taken legally in said case, and your petitioner further shows that he believes and expects that he will be made a party to a chancery suit hereafter to be brought among the said parties in said Circuit Court, to settle the right to said land, and in which suit the validity of said pre-emption right of said John Perciful, dec'd, under the act of Congress of 1814, will be impeached and involved, and your petitioner believes that the testimony of Adam Stroud, Thomas Woodward, and James Neel will be necessary, and vitally important to his right in the trial of said cause, and he therefore prays your Honor to grant him a commission according to the statute in such case made and provided, to take and perpetuate their testimony in relation to said pre-emption.

By Adam Stroud, your petitioner believes he will be able to prove

that the said John Perciful did inhabit and cultivate said quarter section of land for several years prior to the 12th of April, 1814, and was in possession thereof at the passage of said pre-emption act, and that he never did remove from the Territory of Arkansas after his first settlement therein, which was prior to the year 1810.

By said James Neel, your petitioner believes he will be able to prove that the said Neel resided in the vicinity of the Hot Springs since the year 1812, and that he knows that said Perciful did inhabit said quarter section of land, now embracing said Hot Springs, several years prior to the 12th April, 1814, and never did remove from said Territory of Arkansas.

By said Thomas Woodward, your petitioner believes he will be able to prove that he visited said Hot Springs in the year 1816, and the said John Perciful then occupied and lived on said tract of land, and that he boarded with him several weeks.

The said Stroud lives on the military road in Clark County in this State, and the said Neel in Hot Spring County, and the said Woodward, in Camden, Ouachita County, all in this State.

Your petitioner prays your honor to have commissions issued to take said depositions according to law, that they may be used by him in the trial of any cause involving the title of said Springs and land, particularly the pre-emption right of John Perciful, dec'd, thereto as aforesaid.

JOHN C. HALE,
By ENGLISH, TRAPNALL & TRAPNALL.

HOT SPRING COUNTY.

I, John C. Hale, the petitioner aforesaid, do state that the facts set forth in *in* the said petition are true to the best of my knowledge and belief. J. C. HALE.

Subscribed and sworn to by said J. C. Hale, before me, this *this* 15th day of January, 1853. L. RUNYAN, *J. P.*

HOT SPRING COUNTY.

I, John C. Hale, the petitioner aforesaid, state the facts set forth in said petition *is* is true to the best of — knowledge and belief.
J. C. HALE.

Subscribed and sworn to by said J. C. Hale, before me, on 5th of March, 1853. PHINEAS BARNES, *J. P.*

On examination of the foregoing petition of John C. Hale, I, as Judge of the Hot Spring Circuit Court, do hereby grant the commission therein prayed for, and the Clerk of said Circuit Court is hereby required to issue a commission to any judge of a court of record, or to any two justices of the peace in the county of Clark, requiring such judge or justices to take the deposition of Adam Stroud: and that he also issue a commission to any judge of a court of record, or to any two justices of the peace of the county of Washita, requiring such judge or justices to take the deposition

of Thomas Woodward; and that he also issue a commission to any judge of a court of record, or to any two justices of the peace of the County of Hot Springs, requiring such judge or justices to take the deposition of James Neal; the said John C. Hale first giving to every person who may be known to be interested in the premises, his attorney or agent, at least twenty days' notice of the times and places of taking said deposition respect*fully*, and also delivering with every such notice a copy of the within and foregoing petition. And the clerk of said Circuit Court is hereby further required immediately on the return of said depositions to his office, in his ex-officio capacity of recorder, to record them and the papers and documents connected therewith, as required by law.

J. C. MURRAY,
Judge of the Hot Spring Circuit Court of Arkansas.

STATE OF ARKANSAS,
County of Hot Spring.

The State of Arkansas, to any judge of any court of record, or to any two justices of the peace in the county of Hot Springs, in the State of Arkansas, greeting:—

Know ye, that the Hon. John C. Murray, Judge of our Hot Springs Circuit Court, having, upon the petition of John C. Hale, granted an order for the said Hale to take and perpetuate the testimony of James Neel, of your county, touching his knowledge of the matter in controversy, or which may hereafter be in controversy between said Hale and others in reference to the title to the tract of land upon which the Hot Springs are situated, &c.

Know ye, that reposing confidence in your prudence and fidelity, do by these presents give unto you authority, diligently to examine said witness touching his knowledge of the matters aforesaid.

Therefore, we do desire you at such time and place as shall be named to you for the purpose, you cause said witnesses to come before you, that you then and there examine him upon his corporal oath first taken before you, that you reduce his examination to writing, and when you shall so have taken them, that you send the same with this commission closed up under your seal to us at Rockport, Arkansas, without delay.

Witness, John P. Emerson, Clerk of said Circuit Court of Hot Spring County, and the seal of said court at office, this 25th day of July, 1853.

[L. S.]

The execution of the commission appears by the schedule hereto annexed.

L. RUNYAN, *J. P.*
PHINEAS BARNES, *J. P.*

Deposition of witness taken and subscribed before us, acting Justices of the Peace for the County of Hot Spring, in the State of Arkansas, duly commissioned as such justices on the seventh day of October, A. D. eighteen hundred and fifty-three, between the hours of 8 o'clock A. M. and 6 o'clock P. M. of said day, at the

office of John C. Hale, Justice of the Peace, in Hot Spring valley, in the town of Hot Spring, in the County of Hot Spring, in the State of Arkansas, in pursuance of a commission hereto annexed, for the purpose of taking and perpetuating the testimony of said witness, to be read in evidence in the suits or controversies conditionally, which may hereafter arise between John C. Hale and others in relation to the title to the tract of land upon the Hot Springs are situated and particularly in

L. RUNYAN, *J. P.*
PHINEAS BARNES, *J. P.*

evidence in favor of the pre-emption right of John Perciful, deceased, thereto.

James Neel, a witness known to *me* to be of lawful age, being to *me* at the time and place aforesaid produced, and being first duly sworn to testify the truth, the whole truth, and nothing but the truth, in relation to the right of pre-emption of John Perciful, deceased, to the tract of land embracing the Hot Springs, in the County of Hot Springs, in the State of Arkansas, did then and there, on his oath aforesaid, depose as follows, to wit:—

1 Quest. by Jno. C. Hale. At what date did you first become acquainted with John Perciful, deceased, the claimant of a pre-emption right to the tract of land embracing the Hot Springs as aforesaid? Answer. In the summer of eighteen hundred and twelve.

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PHINEAS BARNES, *J. P.*

2d Question. Where did you first become acquainted with him? Answer. My first acquaintance with him was in Hot Spring valley, at that time in the Territory of Arkansas, now known as the Hot Springs in the State of Arkansas.

3d Question. In what business was he engaged at said Hot Springs at the time of your first acquaintance with him? Answer. He was at that time keeping of a few boarders, and living at said Springs in a little log-cabin.

4th Quest. Was there any more cabins or shanties claimed by him than that in which he was living? Answer. Not that I recollect of; there was none claimed by any one else at that time, to my knowledge.

5th Question. Did you see any cultivation there in that year?

J. RUNYAN, *J. P.*
PHINEAS BARNES, *J. P.*

Answer. None at all that I saw, with the exception of a small patch which was called Perciful's garden or truck patch, which was situated on the east side of the Hot Springs Creek, extending up towards the foot of the mountain, right above the upper main Hot Spring, as was called them days, and is called the upper these *these* days.

6th Question. Do you recollect who called it Perciful's? Ans. I do not recollect of any particular person, with the exception of Perciful himself.

7th Question. Was there anybody living with Perciful at that date? Answer. There was a young man that I was acquainted with previous to that time, by the name of Thomas Holman, that told

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me at that time that he was living with Mr. John Perciful, and I saw him doing things about the cabin.

8th Question. How far was the residence or house Perciful inhabited at that time from the Hot Springs and the garden, and place where John C. Hale's house now stands? Answer. I should suppose, according to my recollection, that it was about between forty and sixty steps from the hot water, not very far from the centre of the main hot water, and, as near as I can guess, between two hundred and seventy yards to what was called his garden or truck patch, and about where John C. Hale's main building now stands.

9th Question. How long before you visited the Springs again?

L. RUNYAN, *J. P.*
PHINEAS BARNES, *J. P.*

Ans. As well as I can recollect, it was some time in the fall; I was there in the Hot Springs valley again in eighteen hundred and fourteen.

10th Question. Who did you find living at the same house that Perciful was living in eighteen hundred and twelve? Answer. Perciful was living in the same building himself.

11th Question. Where have you principally lived since eighteen hundred and twelve? Ans. My home has been within fifty to sixty miles of the Hot Spring Valley, in Arkansas.

12th Question. Do you ever know of Perciful's having moved from said territory after your first acquaintance with him? Ans. I know he never did remove from said territory.

L. RUNYAN, *J. P.*
PHINEAS BARNES, *J. P.*

13th Question. Upon what quarter section was the buildings, improvements, and cultivation of said Perciful situated? Answer. They were upon that quarter section embracing the Hot Springs, and partly covered by Rector's New Madrid Location, as I am informed.

14th Question. Where were you in January 20th, 1851, when the investigation between the parties claiming the Hot Springs was had before the register and receiver at Washington, Arkansas? Answer. I was on a steamboat, on my way from Little Rock to New Orleans.

15th Question. Did you ever hear Perciful say he claimed the Hot Springs by virtue of his settlement right? Answer. I did.

L. RUNYAN, *J. P.*
PHINEAS BARNES, *J. P.*

16th Question. Did you ever hear any one else claim said Hot

Springs by virtue of a settlement right previous to 1814? Ans. I did not.

17th Question. What is your age? Answer. Sixty-four years old July last; and further this deponent saith not. JAM. NEEL.

STATE OF ARKANSAS,
County of Hot Spring.

We, Lawson Runyan and Phineas Barnes, acting and duly commissioned Justices of the Peace in and for the County of Hot Spring, in the State of Arkansas, do hereby certify and make known that the foregoing depositions of James Neel was taken before us on the 7th day of October, A. D. 1853, between the hours and at the place in the caption hereof above mentioned; that the examination, responses, and statements of the said deponent was reduced to writing in our presence, and by said deponent sworn to and subscribed in our presence, at the time and place aforesaid, and that the said deponent is a resident of the County of Hot Spring, and State of Arkansas. In testimony whereof we, L. Runyan and Phineas Barnes, Justices of the Peace, do hereunto set our hands at Hot Spring, in the State of Arkansas, this 7th day of October, A. D. 1853.

L. RUNYAN, *J. P.*
PHINEAS BARNES, *J. P.*

STATE OF ARKANSAS,
County of Hot Springs.

I, Jno. P. Emerson, Clerk of the Circuit Court and *ex-officio* recorder in and for the county of Hot Spring, and State aforesaid, do hereby certify that the foregoing depositions were filed in my office on this 1st day of November, 1853, and is now duly recorded with all the accompanying papers (to wit), the petition of John C. Hale to the judge; the order of the judge; the notice to Henry M. Rector, and the heirs of Ludovicus Belding, deceased; with a copy of the petition and order aforesaid in record book of deeds marked D, from page 291 to page 302 inclusive.

In testimony whereof, I, John P. Emerson, Clerk of the Circuit Court and ex-officio recorder, have set my hand and affixed the seal of said Court, at office, in Rockport, this first day of November, 1853. [L. S]. JOHN P. EMERSON, *Clerk.*

To Henry M. Rector, or Ebezer Cummins, Esq., his attorney, William H. Gaines and wife, Maria Gaines, formerly Maria Belding, Albert Belding, Henry Belding, and George Belding, heirs-at-law of Ludovicus, dec'd, or James M. Curran, his attorney.

Take notice that, in pursuance of an order of the Honorable John C. Murray, Judge of the Hot Spring Circuit Court, for commissions to perpetuate, &c., in conformity with a commission issued thereunder, a copy of which order and petition upon it was made being hereto attached, I shall proceed, on the 14th day of October, 1853, between the hours of 8 o'clock A. M. and 6 o'clock P. M.

of said —, at the court house in the city of Camden, in the county of Washita, in the State of Arkansas, to take the deposition of Thomas Woodward, touching his knowledge of the matters and things set forth in said petition hereto annexed, to be used in evidence in the suits or controversies referred to in said petition (conditionally), when and where you may attend, if you think proper, and the taking of the depositions under this notice, if not completed on said day, will be continued over from day to day thereafter at the same place, and between the same hours, until concluded. Given this 3d day of September, 1853.

JOHN C. HALE,
By E. H. ENGLISH, *Att'y.*

Served the within notice on Henry M. Rector, in Saline County, September 6th, 1853, by handing him a true copy of the petition and order therein referred to, and hereto attached.

WM. A CRAWFORD,
Sheriff of Saline County, Arks.

Sheriff fees—

Serving notice	50
Copying	1 00
Mileage	60
	$2 10

Served the within notice on William H. Gaines and wife, Maria Gaines, Albert Belding, Henry Belding, and George Belding, heirs-at-law of Ludovicus Belding, dec'd, by handing to James M. Curran, their attorney and agent, a true copy of the within notice, together with a true copy of the petition and order therein referred to and hereto attached. Done in Pulaski County, Arkansas, September 6th, 1853.

JOHN C. PEAY,
Sheriff of Pulaski County, Arks.,
By HUGH BROGAN, *Dept.*

Sheriff's fees—$\frac{50}{100}$

To the Hon. John C. Murray, Judge of the Hot Springs Circuit Court of the State of Arkansas :—

Your petitioner, John C. Hale, would respectfully show unto your honor that he is one of the claimants of the southwest quarter of section thirty-three, in township two, south of range nineteen west, in the county of Hot Springs, upon which the Hot Springs are situated, under and by virtue of the pre-emption of John Perciful, dec'd, which quarter section is also claimed by Henry M. Rector, under a New Madrid location, and by Wm. H. Gaines and wife, and the other heirs of Ludovicus Belding, deceased, under a pre-emption; and your petitioner further shows that said heirs of L. Belding, dec'd, have instituted an action of ejectment against your petitioner in the Hot Spring Circuit Court for said land; and judgment having been rendered against *them* therein, *they* appealed to the Supreme Court, where said suit is now pending.

Your petitioner would further show, that if the said judgment

should be reversed, and said cause remanded to the Circuit Court, and tried anew, he may need the testimony of several witnesses who are now growing old, and may die before their depositions can be taken legally in said case.

And your petitioner further shows that he believes and expects that he will be made a party to a chancery suit hereafter to be brought among said parties in said Circuit Court, to settle the right to said land, and in suit the validity of said pre-emption right of the said John Perciful, dec'd, under the act of Congress of 1814, will be impeached and involved; and your petitioner believes that the testimony of Adam Stroud, Thomas Woodward, and James Neel, will be necessary and vitally important to his right in the trial of said cause, and he therefore prays your honor to grant him a commission according to the statute in such cases made and provided to take and perpetuate their testimony in relation to said pre-emption.

By said Adam Stroud, your petitioner believes he will be able to prove that the said John Perciful dec'd, did inhabit and cultivate said quarter section of land for several years prior to the 12th of April, 1814, and was in possession thereof at the passage of said pre-emption act, and that never did remove from the territory of Arkansas after his first settlement therein, which was prior to the year 1810.

By James Neel, your petitioner believes he will be able to prove that he, the said Neel, resided in the vicinity of said Hot Springs since the year 1812, and that he knows that said John Perciful did inhabit and cultivate said quarter — of land, now embracing said Hot Springs, several years prior to the 12th of April, 1814, and never did remove from said territory of Arkansas. By said Thomas Woodward, your petitioner believes he will be able to prove that visited said Hot Springs in the year 1816, and that the said John Perciful then occupied and lived on said tract of land, and that he boarded with him several weeks.

The said Stroud lives on the military road in Clark County, in this State, and the said Neel in Hot Spring County, and the said Woodward in Camden, Washita County, all in this State.

Your petitioner prays your Honor to have commissions issued to take said depositions according to law, that they may be used by him on the trial of any case involving the title to said Springs and land, and particularly the pre-emption right of said John Perciful, dec'd, thereto as aforesaid.

JOHN C. HALE,
By ENGLISH, TRAPNALL & TRAPNALL.

HOT SPRING CO.

I, John C. Hale, the petitioner aforesaid, do — that the facts set forth in the said petitioner are true, to the best of my knowledge and belief. JOHN C. HALE.

Subscribed and sworn to by said Hale before me this 15th day of Jan., 1853. L. RUNYAN, *J. P.*

HOT SPRING COUNTY.

I, John C. Hale, the petitioner aforesaid, state that the facts set forth in said petition are true, to the best of my knowledge and belief. J. C. HALE.

Subscribed and sworn to by the said J. C. Hale before me on 5th of March, 1853. PHINEAS BARNES, *J. P.*

On examination of the foregoing petition of John C. Hale, I, as Judge of the Hot Spring Circuit Court, do hereby grant the commissions therein prayed for, and the Clerk of said Circuit —— is hereby required to issue a commission to any judge of any court of record, or to any two justices of the peace in the County of Clark, requiring such judge or justices to take the depositions of Adam Stroud; and that he also issue a commission to any judge of a court of record, or to any two justices of the peace of the County of Washita, requiring such judge or justices to take the deposition of Thomas Woodward, and that he issue also a commission to any judge of a court of record, or to any two justices of the peace of the County of Hot Spring, requiring such judge or justices to take the deposition of James Neel, the said John C. Hale first giving to every person who may be known to be interested in the premises, his attorney or agent, at least twenty days' notice of the times and places of taking said depositions respectively, and also delivering with every such notice a copy of the within and foregoing petition; and the clerk of said Circuit Court is hereby further required, immediately on the return of said depositions to his office, in his *ex-officio* capacity of Recorder, to record them, and the papers and documents connected therewith, as required by law. J. C. MURRAY,

Judge of Hot Spring Circuit Court, Arkansas.

STATE OF ARKANSAS,
County of Hot Spring.

The State of Arkansas to any judge of any court of record, or to any two justices of the peace, in the county of Washita, in the State of Arkansas, greeting:—

Know ye, that the Hon. John C. Murray, Judge of our Hot Spring Circuit Court, having, upon the petition of John C. Hale, granted an order for the said Hale to take and perpetuate the testimony of Thomas Woodward, of your county, touching his knowledge of the matters in controversy, or which may hereafter be in controversy, between said Hale and others, in reference to the title to the tract of land upon which the Hot Springs are situated, &c.

Know ye that we, reposing confidence in your prudence and fidelity, do by these presents give unto you authority diligently to examine said witness touching his knowledge of the matters aforesaid. Therefore we desire you, at such time and place as shall be named to you for that purpose, you cause the said witness to come before you, that you then and there examine him upon his corporal oath

first taken before —, that you reduce his examination to writing, and when you shall so have taken them, that you send the same, with this commission, closed up under your seal, to us, at Rockport, Arkansas, without delay.

Witness John P. Emerson, Clerk of said Circuit Court of Hot Spring County, and the seal of said Court, at office, this 25th day of July, 1853. JNO. P. EMERSON, *Clerk.*

CAMDEN, ARK., *Oct.*, 1853.
Oct. 14*th*, 1853.

Court of Ecore, Fabre Township, Ouachita County, met for the purpose of taking deposition of Thomas Woodward, in the case of J. C. Hale and other, for the perpetuating the testimony of said Thomas Woodward by virtue of a commission from the Hon. John C. Murray, Judge of the Hot Spring Circuit Court.

The said Thomas Woodward not appearing on said day, said court was adjourned to meet Saturday, October 15th, 1853, at 10 o'clock A. M.

Saturday, October 15*th*, 1853.

Court met pursuant to adjournment, said witness, Thomas Woodward, failing to appear, said Court adjourned to meet on Monday, 17th October, at 10 A. M.

Monday, October 17*th*, 1853.

Court met pursuant to adjournment, when said witness appeared, and I proceeded to take the deposition of said witness after being duly sworn.

Deposition of witness taken and subscribed before me, E. H. Whitfield, *and* acting justice of the peace for the county of Ouachita, in the State of Arkansas, duly commissioned as such on this 17th day of October, A. D. 1853, between the hours of 8 o'clock A. M., and 6 o'clock P. M., of said day, at the court house in the city of Camden, in the county of Ouachita, in the State of Arkansas, in pursuance of a commission hereto annexed to perpetuate the testimony of Thomas Woodward, to be read in evidence in the suits in controversy set forth in the petition hereto annexed wherein the heirs of L. Belding, deceased, and J. C. Hale and others, defendants, on the part of said J. C. Hale. Thomas Woodward, known to me to be of lawful age, being to me at the time and place aforesaid produced, and being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, in regard to the matters in controversy in the suit aforesaid, did then and there, on his oath aforesaid, deposes as follows, to wit:

Thomas Woodward testifies as follows:—

That I was at the Hot Springs in the month of May, and left in the month of June after remaining some 20 days, in the year 1816; during the time that I stayed at the Springs, I boarded with one John Perciful and his wife Sarah; that they resided in log houses,

and had some enclosures, and among them a garden which was cultivated in vegetables, and a lot for horses. He had, at the time, living with him a man of Thomas Holman, and Perciful told me he came there in 1807, and had been living there from that time until then, and Holman informed me that he had been living with him several years.

There was at that time divers white persons and Indians camped about the Springs, but none appeared to exercise any ownership except Perciful. The others appeared to have come there for the benefit of the water, and matters of curiosity.

I again visited the Springs in 1841, and found Mrs. Perciful still living there with one John C. Hale, that is, she was living there a portion of her time; and she and her son David Perciful informed me they had sold — interest in the Springs to John C. Hale and a man by the name of Wood.

I have seen since a plat certified by the surveyor-general. I find that the settlement and cultivation aforesaid of the said John Perciful is situated on the southwest quarter of section 33, of township 2, south of range 19 west, and to the best of my recollection there was no other house or houses on said premises but what was claimed by said Perciful. I recollect to have become acquainted with a man by the name of Winthrop Colbreath, who then lived near the Caddo, but was at the Springs when I was there in 1816; also a man by the name of Neel, who I think now lives in Caddo Cove; both I have seen at the Hot Springs since I became a citizen of Arkansas in 1842.

In the year 1850, when I gave my first deposition, Neel was there at the Springs, and his recollection and mine in regard to Perciful being the only claimant in 1816 were the same, for we talked the matter over.

I have frequently visited the Springs since I became a citizen of Arkansas, and have always found John C. Hale in possession of the property which I understood to belong to Mrs. Perciful in 1841, though there had, for the last five years, been some alterations made by pulling down houses and putting up others in their stead.

October 17th, 1853. THOS. WOODWARD.

STATE OF ARKANSAS,
County of Ouachita.

I, E. H. Whitfield, an acting and duly commissioned Justice of the Peace in and for the County of Ouachita, and State of Arkansas, do hereby certify and make known that the foregoing deposition of Thomas Woodward was taken before me on the 17th day of October, A. D. 1853, between the hours and at the place in the caption hereof above mentioned, that the statement of said deponent was reduced to writing in my presence, and by the said deponent sworn to and subscribed in my presence at the time and place aforesaid,

and that said deponent is a resident of the County of Ouachita and State of Arkansas.

In testimony whereof I, E. H. Whitfield, Justice of the Peace, do hereunto set my hand at Camden, in the State of Arkansas, this 17th day of October, A. D. 1853.

E. H. WHITFIELD, *J. P.*

STATE OF ARKANSAS,
County of Hot Spring.

I, John P. Emerson, Clerk of the Circuit Court, and *ex-officio* recorder in and for the County of Hot Spring, and State aforesaid, do hereby certify that the annexed and foregoing deposition, with all the accompanying papers and documents, to wit: copy of the petition of John C. Hale to John C. Murray, Judge of the Circuit Court of said county; notice to Henry M. Rector and the heirs of Ludovicus Belding, dec'd; order of the judge for commissions to issue, &c., and commissions were filed in my office on the 1st day of November, 1853, and are now duly recorded in record book of deeds marked D, from page 303 to page 310, inclusive.

In testimony whereof I, John P. Emerson, Clerk of the Circuit Court of said county, have set my hand and affixed the seal of said court thereto at office, this 1st day of November, 1853.

JNO. P. EMERSON, *Clerk.*

To Henry M. Rector, or Ebenezer Cummins, Esq., his attorney, William H. Gaines and wife, Maria Gaines, formerly Mariah Belding, Albert Belding, Henry Belding, and George Belding, heirs-at-law of Ludovicus Belding, or James M. Curran, their attorney: Take notice, that in pursuance of an order of the Hon. John C. Murray, Judge of the Hot Spring Circuit Court, for commissions to perpetuate testimony, &c., and in conformity with a commission issued thereunder, a copy of which order and petition, on which it was made, being hereto attached, I shall proceed on the 21st day of October, 1853, between the hours of 8 o'clock A. M. and 6 o'clock P. M. of said day, at the residence of Adam Stroud, in the County of Clark, in the State of Arkansas, on the military road, to take the deposition of said *Adam Stroud*, touching his knowledge of the matters and things set forth in said petition hereto annexed, to be read in evidence in the suit or controversies referred to in said petition (conditionally), when and where you may attend if you think proper; and the taking of the depositions under this notice, if not completed on said day, will be continued over from day to day thereafter at the same place, and between the same hours, until concluded.

Given this 3d Sept., 1853. JOHN C. HALE,
By E. H. ENGLISH, *Att'y.*

Served the within notice on Henry M. Rector, in Saline County, Sept. the 6th, 1853, by handing him a true copy thereof, together

with a true copy of the petition and order therein referred to and hereto attached.

WM. A. CRAWFORD,
Sheriff of Saline County, Arks.

Sheriff's fees—	
Serving notice,	50
Copy,	1 00
Mileage,	60
	$2 10

Served the within notice on William H. Gaines and wife, Mariah Gaines, Albert Belding, Henry Belding, and George Belding, heirs-at-law of Ludovicus Belding, deceased, by handing to James M. Curran, their attorney and agent, a true copy of the within notice, together with a true copy of the petition and order therein referred to and hereto attached. Done in Pulaski County, Arkansas, Sept. the 6th, 1853.

JOHN C. PEAY,
Sheriff of Pulaski County, Arks.
By H. BROGAN,
Dept. Sheriff.

Sheriff's fee—$\frac{50}{100}$.

To the Hon. John C. Murray, Judge of the Hot Spring Circuit Court, of the State of Arkansas.

Your petitioner, John C. Hale, would respectfully show unto your honor, that he is one of the claimants of the southwest quarter of section thirty-three, in township two, south of range nineteen west, in the County of Hot Spring, upon which the Hot Springs are situated, under and by virtue of the pre-emption of John Perciful, dec'd, which quarter section is also claimed by Henry M. Rector under a New Madrid location, and by — H. Gaines and wife, and the other heirs of Ludovicus Belding, dec'd, under a pre-emption; and your petitioner further shows, that said heirs of L. Belding, dec'd, have instituted an action of ejectment against your petitioner, in Hot Spring Circuit Court for said land, and judgment having been rendered against *them*, *the* appealed to the Supreme Court, where said suit is now pending.

Your petitioner would further show, that if said judgment should be reversed, and said case remanded to the Circuit Court and then tried anew, he may need the testimony of several witnesses who are now growing old, and may die before their depositions can be taken legally in said case.

And your petitioner further shows, that he believes and expects that he will be made a party to a chancery suit hereafter to be brought among said parties in said Circuit Court, to settle the right to said land, and in which suit the validity of said pre-emption right of said John Perciful will be impeached, and involved; and your petitioner believes that the testimony of Adam Stroud, Thomas Woodward, and James Neel, will be necessary and vitally important to

his rights in the trial of said cause, and he therefore prays your honor to grant him a commission according to the statute in such case made and provided, to take and perpetuate their testimony in relation to said pre-emption.

By said Adam Stroud, your petitioner believes he will be able to prove that the said John Perciful did inhabit and cultivate said quarter section of land for several years prior to the 12th of April, 1814, and was in possession thereof at the passage of said pre-emption act, and that he never did remove from the Territory of Arkansas after his first settlement therein, which was prior to the year 1810.

By said James Neel, your petitioner believes he will be able to prove that he, the said Neel, resided in the vicinity of said Hot Springs, since the year 1812, and that he knows that Perciful did inhabit and cultivate said quarter section of land now embracing said Hot Springs, several years prior to the twelfth of April, 1814, and never did remove from said Territory of Arkansas.

By said Thomas Woodward, your petitioner believes he will be able to prove that he visited said Hot Springs in the year 1816, and that the said John Perciful then occupied and lived on said tract of land, and that he boarded with him several weeks. The said Stroud lives on the military road, in Clark County, in this State; and the said Neel in Hot Spring County, and the said Woodward in Camden, Washita County, all in this state.

Your petitioner prays your honor to have commissions issued to take said depositions according to law, that they may be used by him in the trial of any case involving the title to said Springs and land, and particularly the pre-emption right of John Perciful, dec'd, thereto as aforesaid.

JOHN C. HALE,
By ENGLISH, & TRAPNALL & TRAPNALL.

HOT SPRING CO.

I, John C. Hale, the petitioner aforesaid, do state that the facts set forth in said petition are true to the best of my knowledge and belief.

J. C. HALE.

Subscribed and sworn to by said Hale, before me this 15th day of January, 1853. L. RUNYAN, *J. P.*

HOT SPRING COUNTY.

I, John C. Hale, the petitioner aforesaid, state that the facts set forth in said petition is true to the best of my knowledge and belief.

J. C. HALE.

Subscribed and sworn to by the said J. C. Hale, before me, on 5th of March, 1853. PHINEAS BARNS, *J. P.*

On examination of the foregoing petition of John C. Hale, I, as Judge of the Hot Spring Circuit Court, do hereby grant the commissions therein prayed for, and the Clerk of said Circuit Court is hereby required to issue a commission to any judge of a court of record,

or to any two justices of the peace of the county of Clark, requiring such judge or justices to take the deposition of Adam Stroud. And that he also issue a commission to any judge of a court of record, or to any two justices of the peace of the county of Washita, requiring such judge or justices to take the deposition of Thomas Woodward. And that he issue also a commission to any judge of a court of record, or to any two justices of the peace of the County of Hot Spring, requiring such judge or justices to take the deposition of James Neel. The said John C. Hale first giving to every person who may be known to be interested in the premises, their attorney or agent, at least twenty days' notice of the times and places of taking said depositions respectively. And also delivering with every such notice a copy of the within and foregoing petition, and the Clerk of said Circuit Court is hereby further required immediately on the return of said depositions to his office in his *ex-officio* capacity of recorder, to record them, and the papers and documents connected therewith, as required by law. J. C. MURRAY,

Judge of the Hot Spring Circuit Court, Arkansas.

STATE OF ARKANSAS,
County of Hot Spring.

The State of Arkansas to any judge of any court of record, or to any two justices of the peace, in the county of Clark, in the State of Arkansas, greeting:—

Know ye, that Hon. John C. Murray, Judge of our Hot Spring Circuit Court, having, upon the petition of John C. Hale, granted and order for the said Hale to take and perpetuate the testimony of Adam Stroud of your county, touching his knowledge of the matters in controversy, or which may hereafter be in controversy, between said Hale and others, in reference to the title to the tract of land upon which the Hot Springs are situated, &c.

Know ye, that we, reposing confidence in your prudence and fidelity, do by these presents give unto you authority diligently to examine said witness touching his knowledge of the matters aforesaid. Therefore we do desire you, at such time and place as shall be named to you for that purpose, you cause the said witness to come before you, that you then and there examine him, on his corporal oath, first taken before you, that you reduce his examination to writing; and when you shall so have taken them, that you send them with this commission, closed up under your seal, to us, at Rockport, Arkansas, without delay.

Witness John P. Emerson, Clerk of said Circuit Court of Hot Spring County, and the seal of said Court, at office, this 25th day of July, A. D. 1853.

[L. S.] JOHN P. EMERSON, *Clerk.*

The execution of the within writ on the reverse side of the paper appears by the schedule hereto annexed.

L. G. EVANS,
Judge of the Probate Court.

Deposition of witness taken and subscribed before me, Lawrence G. Evans, Judge of the Court of Probate in and for the county of Clark (the same being a court of record), in the State of Arkansas, duly commissioned as such, on this 21st day of October, A. D. 1853, between the hours of 8 o'clock A. M., and 6 o'clock P. M., of said day, at the residence of Adam Stroud, in the county of Clark, in the State of Arkansas, on the military road, in pursuance of a commission hereto annexed, and to be read as evidence in any suit, action, or controversy, which may or shall arise touching the validity or merits of a pre-emption claim of John Perciful, dec'd, to the southwest quarter of section thirty-three, in township two, south of the base line in range nineteen, west of the fifth principal meridian, the same being the land on which the celebrated Hot Springs of Arkansas are situated, said testimony being taken in pursuance, and by authority of a petition to and order of the Judge of Hot Spring Circuit Court, which is hereto annexed and made a part hereof.

Adam Stroud, to me well known as the person described in said petition, order and commission, being at said time and place produced, and being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, in regard to said pre-emption, did then and there, on his oath aforesaid, depose as follows, to wit:—

I was acquainted with John Perciful in the year 1811. I was at the Hot Springs in 1811, 1812, 1813, and 1814, and saw John Perciful there. About 40 yards above the crack in the rock, and the same distance below the big spring, was one or two huts or small houses, in which he lived and was recognized as the head and proprietor of the premises. He took in everybody that called on him. He had in cultivation a small field or patch on the east side of the creek, at the head of the valley, and running down the creek to the edge of the mountain out of which the hot water comes, the fence running up and down the creek, run close to the rock bath, but I cannot say whether the rock bath was inside the field or not. A number of years afterwards he moved to Red River, and stayed there a short time and then returned to the Springs. I am pretty confident he never left what is now the State of Arkansas after his first settlement at the Springs. The Springs before 1814 were called Perciful Springs, and no person else was supposed to have any claim, and his claim was supposed to be a settlement right alone. The Springs alluded to above are what *is* known as the Hot Springs of Arkansas. The deponent further sayeth not.

A. STROUD.

STATE OF ARKANSAS,
County of Clark.

I, Lawrence G. Evans, Judge of the Probate Court in and for the county of Clark, in the State of Arkansas, do hereby certify and make known that the foregoing deposition of Adam Stroud was

taken before me on the 21st day of October, A. D. 1853, between the hours and at the place in the caption hereof above mentioned; that the examination, responses, and statements of said witness were reduced to writing by me, and by the said deponent sworn to and subscribed in my presence at the time and place aforesaid, and that said deponent is a resident of the County of Clark and State of Arkansas.

In testimony whereof, I, Lawrence G. Evans, Judge as aforesaid, do hereunto set my hand, at Clark County, in the State of Arkansas, this 21st day of October, A. D. 1853.

L. G. EVANS, [SEAL.]
Judge of Clark Probate Court.

STATE OF ARKANSAS,
County of Hot Spring.

I, John P. Emerson, clerk of the Circuit Court, and ex-officio recorder in and for the County of Hot Spring, and State of Arkansas, do hereby certify that the annexed and foregoing deposition was filed in my office on this first day of November, 1853, and that the same with all the accompanying papers and documents, to wit: The notice to Henry M. Rector and the heirs of Ludovicus Belding, dec'd, petition of John C. Hale, for order, commissions, &c. Order of the Hon. John C. Murray, Judge of the Hot Spring Circuit Court, and the commission to take the aforesaid depositions were duly recorded on this day, in record book of deeds marked "D," on page 311 to 317.

In testimony whereof, I have hereunto set my hand as such clerk and affixed the seal of said court, at office, on this 1st day of November, A. D. 1853. [L. S.] JNO. P. EMERSON,
Clerk and ex-officio Recorder.

To the reading of which plaintiffs objected, and the court sustained their objections, to which ruling of the court defendants excepted and asked and obtained time to file his bill of exceptions during the present term.

The defendants then proved that John Perciful was dead, having died before the 1st day of January, 1836, leaving a widow and only son and heir, to wit: Sarah Perciful, widow, and David Perciful, heir.

Whereupon the defendants offered in evidence a title bond of Sarah and David Perciful, with the attached endorsements and certificates to John C. Hale and Milus H. Woods, which was in the words and figures following, to wit:—

Know all men by these presents, that we, John C. Hale and Milus H. Wood, are held and firmly bound unto Sarah Perciful and David Perciful in the sum of three thousand dollars, to which payment well and truly to be made we hereby bind ourselves, severally and jointly, our several and joint heirs, executors, and administrators, firmly by these presents.

In testimony whereof, we have hereunto set our hands and seals, this 14th day of ———, A. D. 1840.

JOHN C. HALE. [SEAL.]

Attest, WARREN DUNHAM, MILUS H. WOODS. [SEAL.]
JOHN C. KUYKENDALL.

The condition of the above obligation is such, whereas the said above bound John C. Hale and Milus H. Wood have this day purchased of the said Sarah and David Perciful certain improvements made by and under the control of John Perciful, deceased, in part, and the resi*dence* by and under the control of said Sarah and David Perciful, on the public lands of the United States designated, to wit: the west half of section thirty-three in township 2, south of range No. (19) nineteen, west of the fifth principal meridian, and subject to sale at Washington, Arkansas; together with possession, improvements, and all furniture thereunto anywise appertaining. Also, one-half of all the lands, waters, and benefits, privileges that may be acquired from or granted by the Government of the United States or that of the State of Arkansas in consideration of said improvements and settlements right unto them the said Milus H. Wood and John C. Hale, their heirs, assigns, in consideration of which, we, the said John C. Hale and Milus H. Wood, bind ourselves, heirs, executors, and administrators and assigns, severally and jointly, to discharge the above bond, as follows, to wit: To pay or cause to be paid the sum of sixteen hundred and eighty dollars and four cents, the balance due on a judgment in favor of Messrs. Reyburn & Conway, and obtained against the said Sarah and David Perciful and Warren Dunham, at the February term of the Circuit Court in and for Hot Spring County, Arkansas, A. D. 1840, and the further sum of one hundred and fifty dollars on or before the 9th day of December, A. D. 1840; also, the residue of eleven hundred and sixty-nine dollars and ninety-six cents, on or before the first day of January, eighteen hundred and forty-three, the sum of two hundred dollars of which is to be paid at sight, provided the land on which David Perciful now resides is offered previous to the above stipulated time, for all of which we bind ourselves, or heirs, executors, and administrators and assigns for the faithful discharge of the several sums at the stipulated times of payment to the said Sarah and David Perciful, their heirs, executors, administrators and assigns, and whenever the said John C. Hale and Milus H. Woods do pay or cause to be paid in manner and form as prescribed, the above obligation as null and void. But if default shall be made in the payments of either of said sums on the days and times hereinbefore mentioned and appointed for payment thereof respect*fully*, then to be and remain in full force and virtue; and we, the said John C. Hale and Milus H. Woods, do firmly bind ourselves, our heirs, executors, administrators and assigns, severally and jointly, in the further sum of three thousand dollars, payable and conditioned as follows: that is, whenever the said Sarah and David Perciful make or cause to be made a deed

in fee simple with a general warranty to one-half of the one hundred and sixty acres of land which they may acquire from the Government of the United States in consideration of settlement and pre-emption right on the west half of section thirty-three, in township No. (2) two, south of range nineteen west, and embracing the Hot Spring by said settlement, the said half conveyed to the said John C. Hale and Milus H. Woods to be equal in value to the residue of said land, and when the said conveyance shall have been made and confirmed unto the said John C. Hale and Milus H. Woods, their heirs, executors, administrators and assigns, then we, the said J. C. Hale, and M. H. Woods, our heirs, executors, administrators, and assigns, are held and firmly bound for the faithful payment of the above mentioned ten thousand dollars; but should the said Sarah and David Perciful be unable to make the legal conveyance, as above mentioned, by being prevented by other claims or by the General Government, then and in that case both parties are released, so far as the conveyance and the sum of ten thousand dollars, without damage to the other party; but should the said Sarah and David Perciful, their heirs, executors, administrators and assigns obtain a patent from the General Government for the said land, refuse to make or cause to be made the deed as above specified, then and in that case the said Sarah and David Perciful agree their heirs and assigns, are bound to pay unto the said John C. Hale and Milus H. Woods, their heirs and assigns, the sum of fifty thousand dollars, as a consideration for their services and money expended in establishing said right of pre-emption. But if conveyed as above agreed, the said fifty thousand dollars to be null and void, and the said Sarah and David Perciful do agree to pay unto the said John C. Hale and M. H. Woods, their heirs and assigns, the value of all improvements which may be included in their part of said land above mentioned, which sum is to be paid to the credit of the ten thousand dollars agreed on to be paid by the said John C. Hale and M. H. Woods, their heirs nd assigns, as the consideration of the conveyance to be made or caused to be made by the said Sarah and David Perciful, their heirs and assigns. Furthermore, be it expressly understood that the furniture and improvements thus sold and set forth in said contract, shall be held by the said Sarah and David Perciful as security for the faithful discharge of the three thousand dollar bond, though equally understood by the parties that the said furniture and improvements thus sold and purchased shall remain in the hands of the said Hale and Woods until all the aforesaid bond shall become due, which, if punctually paid, the said securities is then null and void, but if not punctually paid the aforesaid securities remain in full force and virtue.

In testimony whereof, we have hereunto set our hands and seals, this the sixteenth day of November, A. D. 1840.

JOHN C. HALE. [SEAL.]
MILUS H. WOOD. [SEAL.]
SARAH PERCIFUL. [SEAL.]
DAVID PERCIFUL. [SEAL.]

Attest,
WARREN DUNHAM,
JNO. C. KUYKENDALL.

Be it remembered, that on the 24th day of May, A. D. eighteen hundred and forty-one, Lawson Runyan, Clerk of the Circuit Court with and for the county aforesaid, and State of Arkansas, appeared in person Sarah Perciful and David Perciful, to me personally known to be — name, appear upon the with and foregoing deed or instrument of writing as two of the grantors and contracting ——— and stated that they had executed the same for the purpose or purposes and consideration therein mentioned and set forth freely and of their own choice. And I do so certify.

In testimony whereof, I have hereunto set my hand as clerk aforesaid, and affixed the seal of my office at Hot Springs, this the 20th day of May, A. D. 1841.

[SEAL.] L. RUNYAN, *Clerk.*

STATE OF ARKANSAS,
County of Hot Spring.

I, Lawson Runyan, Clerk of the Circuit Court, and ex-officio Recorder in and for the county aforesaid, do hereby certify that the annexed and foregoing instrument of writing was filed for record in my office on the twenty-fourth day of May, eighteen hundred and forty-one, and the same is now duly recorded in record book of deeds and mortgages A, pages 231, 232, 233, and 234.

In testimony whereof, I have hereunto set my hand as clerk aforesaid, and affixed my official seal at Hot Springs, this 24th day of May, 1841.

[SEAL.] LAWSON RUNYAN,
Clerk and ex-officio Recorder.

To the reading of which as evidence the plaintiffs objected, and the Court sustained the objection, to which the defendants excepted and asked for and obtained time to prepare and file his bill of exceptions.

Thereupon the defendant offered in evidence a quit-claim deed from David Perciful to John C. Hale, with all the certificates thereto attached, after having first proven the death of Sarah Perciful prior to the date thereof, in the words and figures following, to wit:—

STATE OF ARKANSAS,
County of Hot Spring, ss.

Know all men by these presents, that David Perciful, citizen of the County of Hot Springs, and *State of Hot Springs* State of Arkansas, have this day bargained and sold, transferred and delivered, and by these presents do bargain, sell, and deliver, unto John C. Hale, likewise of said county and State, his heirs and assigns forever, all of my right, title, interest, and claim, in and unto a certain tract or parcel of land situate, lying, and being in the aforesaid county and State, known as the Hot Springs tract, and being known and described as the southwest quarter of section thirty-three (33), township two south (2), of range (19) nineteen, west of the fifth principal meri-

dian in the district of lands subject to sale at Washington, Arkansas, said tract being the same held and owned by me as the legal heir and lawful representative of my late father, John Perciful, deceased, and it is my request and desire that a patent may issue in the name of the said John C. Hale, his heirs or legal representatives for the same.

In consideration whereof, I do hereby acknowledge the receipt in full for the same the sum of eight thousand dollars in cash in hand to me paid by the said John C. Hale, before the sealing and signing of this deed; and I, the said David Perciful, do hereby warrant and guarantee forever unto him, the said John C. Hale, as aforesaid, against the claim of all persons claiming by, through, or from me in any manner whatever; and further, from this day henceforth do place and consider him, the said John C. Hale, now in the possession of all the premises aforesaid together with all and singular the appurtenances and improvements thereunto attached and every whatever.

Witness my hand and seal, at Hot Springs, this the 10th day of January, 1848. DAVID PERCIFUL. [SEAL.]

Witnesses,
LORETTA T. HALE,
WILLIAM G. RECTOR.

County of Hot Spring, to wit:

Be it remembered, that on this 10th day of January, 1848, personally appeared David Perciful, the grantor in the above and foregoing deed, before me the undersigned, Justice of the Peace, Hot Spring County, and State of Arkansas, and acknowledged the same as for his act and deed, sign and seal for the consideration and purposes therein mentioned and set forth, and I so certify.

LAWSON RUNYAN, *J. P.*

STATE OF ARKANSAS,
County of Hot Spring.

Be it remembered, that on this 10th day of January, 1848, personally appeared Elizabeth D. Perciful, wife of David Perciful, whose name appears upon and is subscribed to the annexed and foregoing deed before the undersigned, justice of the peace, and being examined apart from her said husband, acknowledged and declared that she has signed and conveyed her right of dower in the premises therein mentioned, freely and of her own accord, without any fear or compulsion of her said husband, and I so certify.

Witness my hand and seal, at Hot Springs, this 10th day of January.

CHARLES BURKE, *J. P.*
ELIZABETH PERCIFUL.

Filed for record in my office on the 14th day of January, 1848.

WILEY PATTERSON, *Clerk.*

STATE OF ARKANSAS,
County of Hot Spring.

I, Wiley Patterson, Clerk of the Circuit Court, and ex-officio recorder for the county aforesaid, do hereby certify that the annexed and foregoing instrument of writing was filed for record in my office on the 16th day of January, 1848, and the same is now duly recorded in record book B, pages 284 and 285.

In testimony whereof I have hereunto set my hand and affixed my official seal, at Rockport, this 16th day of January, 1848.

[L. S.] WILEY PATTERSON,
Clerk and ex-officio Recorder.

To the admission of which in evidence, the plaintiffs objected, and the Court sustained the objection, to which action of the court the defendant excepted, and asked and obtained time to file his bill of exceptions, during this term by consent. Whereupon the defendants offered and filed an affidavit of John C. Hale, in behalf of defendants as the foundation of secondary evidence, in the words and figures following, to wit:—

STATE OF ARKANSAS,
County of Hot Spring, ss.

I, John C. Hale, do solemnly swear that the original deed from John Perciful to Ludovicus Belding, *on matters* acknowledgment of tenancy upon the part of Ludovicus Belding to and from John Perciful, dated April 2d, A. D. 1831, is not in his custody, or under his control, and that I have made search for it and cannot find it, but the same was forwarded to the general land office at Washington City, and he believes the same has been lost, a copy of which is presented. J. C. HALE.

Sworn Feb'y 28th, A. D. 1856.

JNO. P. EMERSON, *Clerk.*

And then produced and offered to read in evidence a copy of a written agreement in relation to said Hot Springs, between Ludovicus Belding and John Perciful, which is in the words and figures following, to wit:—

Know all men by these presents that I, L. Belding, of the County of Hot Spring, and territory of Arkansas, do acknowledge and make known, that I, the said Belding, did lease the buildings and improvements at the Hot Springs of John Perciful, and acknowledge his right to said improvements, and that I have now, before this date, leased said buildings and all the privileges (except three cabins, two of which are not mine), to Richard C. Hawkins, until the first day of January, 1833, then and at which time I, the said Belding, agree and bind myself to deliver all and every part of the buildings and improvements at said Hot Springs that I have or ever had, in the same condition as said Hawkins is to deliver to me, unto John Per-

ciful, if he demand the same, and that I have no pretensions to the improvements of said Springs, except under the claim of the said John Perciful. Given under my hand this 2d April, 1831.

L. BELDING.

STATE OF ARKANSAS,
County of Hot Spring.

Be it remembered, that Warren Dunham this day appeared in the County Court in session at Hot Springs, and being duly sworn for the purpose, on oath deposeth and saith that the annexed and foregoing instrument of writing is in the handwriting of L. Belding, whose name is subscribed thereto, and that said L. Belding did within a short time after the date thereof proffer to acknowledge the same as for his act and deed for the purposes therein set forth, and that deponent was at that time the acting Judge of Hot Spring County, and further this deponent saith not.

his
WARREN × DUNHAM.
mark.

Sworn to and subscribed in open court, this 5th day of January, A. D. 1842. LAWSON RUNYAN, *Cl'k.*

STATE OF ARKANSAS,
County of Hot Spring.

Be it remembered, that I, H. A. Whittington and Cumberland Polk, this day appeared in open court of the county of Hot Spring, and on their oaths depose and say, that the annexed and foregoing instrument of writing, is to the best of their knowledge and belief, in the hand writing of L. Belding, whose name appears upon and is subscribed thereto, that they have often seen him write; and further these deponents say not.

H. A. WHITTINGTON.
C. POLK.

Sworn to and subscribed in open court, this 5th day of January, 1842. LAWSON RUNYAN, *Cl'k.*

STATE OF ARKANSAS,
County of Hot Spring.

I, Lawson Runyan, Clerk of the Circuit Court and *ex-officio* recorder within and for the county of Hot Springs, and State aforesaid, do hereby certify that the annexed and foregoing instrument of writing was filed for record in my office on the 10th day of January, 1842, and the same is now duly recorded in record book of deeds and mortgages, pages 265, 266, and 267.

In testimony whereof I have hereunto set my hand as such clerk and affixed the seal of my office at Hot Spring this 10th day of January, 1842.

[L. S.] LAWSON RUNYAN,
Clerk and ex-officio Recorder.

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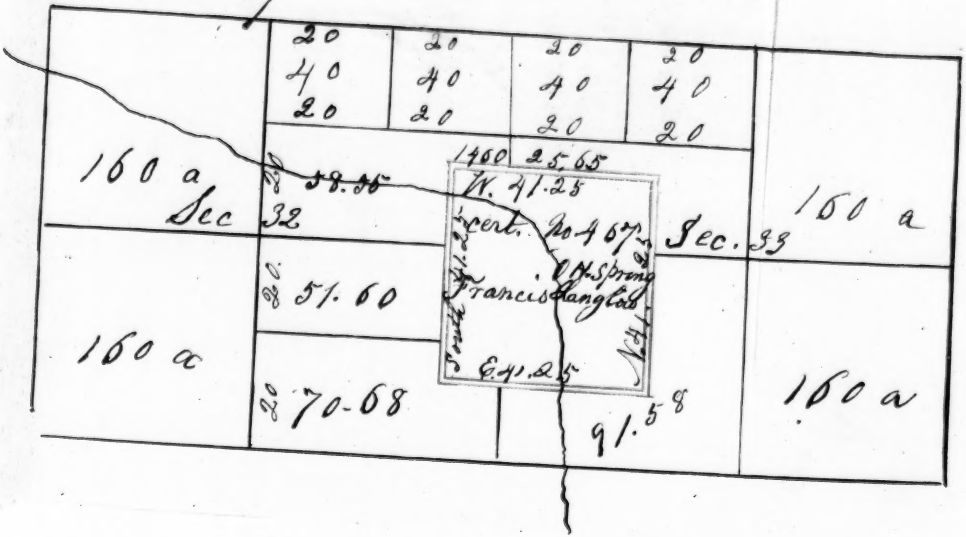

STATE OF ARKANSAS,
County of Hot Spring.

I, John P. Emerson, Clerk of the Circuit Court and *ex-officio* recorder within and for said county, do hereby certify that the foregoing three pages contain a true, perfect, and complete copy of the record in record book "A" of deeds on pages 265, 266, and 267.

In testimony whereof I have hereunto set my hand as such clerk and *ex-officio* recorder, and affixed my seal of office at the county aforesaid, this 27th day of February, A. D. 1856.

[L. S.] JNO. P. EMERSON,
Clerk and ex-officio Recorder.

To the admission of which as testimony the plaintiffs objected, and the Court sustained their objections, to which opinion and judgment of the Court in sustaining said objection and refusing to permit said paper to be read as evidence, the defendant excepted at the time, and asked and obtained time to prepare his bill of exceptions during this term, which was granted them.

Whereupon the defendants introduced in evidence a certified copy from the plat in the office of the Surveyor General of the United States, for Arkansas, of sections 32 and 33, T. 2 S., range 19 west, with marks, &c., as follows, to wit:—

Town. 2 *S., Range* 19 *West.*

(For map, see original, page 117.)

SURVEYOR'S OFFICE, LITTLE ROCK, ARKS., 25*th August*, 1855.

I certify that the above plat or diagram of sections 32 and 33, T. 2 S., R. 19 W., is a true copy from the original plat on file in this office. HENRY M. RECTOR, *Sur. Gl.*

The defendant then introduced Lawson Runyan, a witness, who testified that the public surveys were made to close on the New Madrid location, marked in the plat. From witnesses' knowledge he is satisfied the plat which is shown to him (being the same above copied) is correct. He stated that he knew the premises mentioned in the second count are on said quarter section as well as though the lines had been run by public surveyor of the United States; was with the county surveyor when he run it out; had traced the lines to the place where it closes on said New Madrid location, marked on said plats, and kept on in the same direction, and thus found its location. If a surveyor was to describe the half mile square in the southwest quarter of said section 33 aforesaid, he would describe it as the frl. southwest quarter of section 33, and a part of said New Madrid location; the improvements that are in possession of defendant are not on said fractional quarter but on the half mile square, on the southwest corner of the section within the New Madrid location, as marked on said plat. It has frequently been described to witness in the land office that the S.W. ¼ 33, T. 2 S., R. 19 W. includes

the half mile square in the southwest corner of the section, and consequently covered the land sued for. The property mentioned in the second count is within the New Madrid survey. The *section* are run all around said section 33, except for a short distance where one line is broken by the New Madrid survey. All the section corners and all the half mile corners except one are established.

During the progress of the trial, by consent, the defendants used the affidavit of John C. Hale, filed in the case of Gaines et al. *vs.* Hunter, as foundation for introducing Belding's lease with the same effect as though the defendant had made the affidavit in person.

The defendant here offered to introduce witnesses to prove that one John Perciful inhabited, and claimed, and owned the improvements on the land in suit long prior to 1829, and that some time about that year the said John leased some of the houses on said quarter section of land, which the plaintiffs, by their certificate of entry, claim, to Ludovicus Belding, who occupied said premises for a while about said time as tenant of said Perciful; that said Belding did not and was not residing on and occupying said land on the 29th of May, 1830, but had, prior to that time, removed therefrom to the Gulpha, some six miles away. That said defendants have been in possession of said premises for years, and have made valuable and lasting improvements for many years before the date of the certificate under which the plaintiffs claim, far exceeding the value of the rents and profits; also that they are the owner of an improvement on public land which was entered by the plaintiffs at the land office at Washington, Arkansas, which improvements cover, and include, and constitute the property proved to be in the possession of the defendants, &c.; to which the plaintiffs objected, and refused to permit defendants to introduce evidence to prove said facts, or either of them, to which decision of the Court the defendants at the time excepted, and asked for time to prepare their bill of exceptions during the present term, which is granted.

The defendants then introduced witnesses to rebut the testimony of plaintiffs' witnesses in relation to the amount of rents, by whom they proved that the rents were not so valuable as stated by plaintiffs' witnesses.

Whereupon defendants closed.

This being all the testimony introduced either on the part of plaintiffs or defendants in this cause, the plaintiffs thereupon asked the Court to give the following instructions to the jury in their behalf, to wit:—

GAINES et al.
vs.
MILLS & BUTLER.

The plaintiffs asked the Court to instruct the jury: 1st. That the certificate offered and read in evidence by the plaintiffs *are* sufficient in law to enable them to maintain this action.

2d. That if the jury believe from the evidence that the defendant, Edward Mills, was in possession of the premises mentioned in the declaration at the time of the commencement of this action, they ought to find for the plaintiffs.

3d. That the plaintiffs, if entitled to recover, are also entitled to recover, by way of damages, the rents and profits of said premises from the time of the commencement of this suit down to the present time according as the jury shall find the value of said rents and profits from the evidence adduced before them.

WATKINS & GALLAGHER.

To the giving of which instructions and each and every of them the defendant objected at the time, but the Court overruled said objection of said defendants, and gave the same and all of them; to the giving of which the defendants at the time excepted, and asked for and obtained time to file his bill of exceptions during the present term.

And thereupon the said defendants moved the Court to instruct the jury in their behalf as follows, to wit:—

1st. If the jury believe from the testimony that there is not such a division of land known in the United States as the southwest quarter of section thirty-three, in township two, south of range nineteen, west of the fifth principal meridian, the jury must find for the defendants.

2d. If the jury believe from the testimony that the west half of section thirty-three, in township 2, south of range nineteen west, is divided by the public surveys into the fractional quarter of said section, and the balance of said tract consists of a portion of a New Madrid location, and in no other way, and further, that the tract proven to be in possession of the defendants was in the New Madrid location, marked on the plats, and not on the southwest fractional quarter, the jury must find for the defendants.

3d. That the defendants are not liable for the rents if the jury believe that they are in possession of improvements made upon the public lands, which have been entered by the plaintiffs.

4th. If the jury believe from the evidence that defendants have made valuable and lasting improvements upon said land, they are entitled to recover their value against any claim for rent.

5th. The plaintiffs must recover on the strength of their own title, and not on the weakness of defendants.

6. If the jury believe from the evidence that there is a superior or equal outstanding equitable title in a third party, they must find for the defendant.

7th. If the jury believe that there is a superior outstanding legal title by a third party, they must find for defendants.

To the giving of which instructions, except the fifth and seventh, were objected to by plaintiffs, and said objections *is* sustained by the Court, and the Court refused to give said instructions, or either

of them, except the 5th and 7th, to which ruling and opinion of the Court the defendants at the time excepted, and asked and obtained time to file their bill of exceptions.

And now, on this 1st day of March, A. D. 1856, it being during the present term of this Court, and before said special judge in court, in order to secure and preserve the testimony and exceptions, points and questions aforesaid, brings here in court his bill of exceptions, and prays that the same may be signed, sealed, and made a part of the record herein, time having been given defendants until *to* prepare the same, which is accordingly done.

Witness my hand seal as Judge this 1st day of March, 1856.

J. C. MURRAY, [SEAL.]
Special Judge.

STATE OF ARKANSAS,
County of Hot Springs.

I, John P. Emerson, Clerk of the Circuit Court within and for said county, do hereby certify that the foregoing one hundred and twenty-six pages contain a true, perfect, and complete transcript of the case therein mentioned.

In testimony whereof, I have hereunto set my hand as such clerk, and affixed the seal of said court, at office, in Rockport, on this 23 day of May, 1856.

[L. S.] JOHN P. EMERSON, *Clerk.*

And afterwards, to wit, at a Supreme Court of said State, begun and held at the court-house in the city of Little Rock, on the first Monday of July, A. D. 1856, and on the first day of said term were the following proceedings, to wit:—

At this day come the said appellants, by their attorney, and on motion it is ordered that their assignment of errors be filed, and thereupon the same is filed.

And said assignment of errors is as follows: Comes said plaintiff and says, that in the record of the proceedings and judgment of the Circuit Court of Hot Spring County, there is manifest error in this: 1st. That the Court erred in refusing a continuance of said cause. 2d. The Court erred in permitting evidence to go to the jury upon the part of said defendants which was illegal, irrelevant, and incompetent, and in refusing to permit testimony to go to the jury in said case, on the part of said plaintiffs, which was legal, relevant, and competent. 3d. The Court erred in giving the instruction to the jury asked on the part of the defendant, and in refusing to give those to the jury asked for by plaintiffs. 4th. The verdict and judgment of the Court is for defendant, when by the law of the land the same should be for plaintiffs, and this they, the said defendants, are ready to verify. Wherefore, for these and other errors apparent upon the face of the record in said case, they pray that said judgment be reversed. WILLIAMS & WILLIAMS, *Attorneys for Pl'ff.*

And afterwards, to wit, on the 20 day of October of said term, were the following proceedings:—

At this day come said appellees, by their attorney, and on motion it is ordered that their joinder in errors be filed, and the same is filed. And at the same time come said appellants, by their attorney, and this cause is submitted on the briefs filed, and by the Court taken under advisement.

Said joinder in errors is in the following words: Come the said appellees, by their attorney, and say that in the record of the proceedings aforesaid, and in the judgment in manner and form as herein rendered, there is no error; wherefore they pray that judgment may be in all things affirmed.

WATKINS & GALLAGHER, *Att'ys for Appellees.*

And afterwards, on the said 1 day of August, 1857, at said term of our Supreme Court, commencing on the 1st Monday of July, to which term this cause was continued by operation of law, were the following proceedings, to wit:—

Final Judg't.

This cause came on to be heard upon the transcript of the record of the Circuit Court of Hot Spring County, and was argued by counsel, on consideration whereof, the Court being of opinion that there is no error in the proceedings and judgment of said Circuit Court in this cause, except as to the ruling of the Court that the plaintiffs therein were entitled to recover rents and profits, and the verdict and judgment for damages by way of rents and profits suggested to the appellees that the judgment of said Circuit Court would be reversed, unless they would remit herein the said damages so recovered. Whereupon come said appellees, by their attorney, and on motion file their remittitur damna, which is in the following words: "And the said appellees, by attorney, come and say, that they elect to and do remit the sum of $\$150\frac{00}{100}$ adjudged to them for damages in this behalf, in said Circuit Court, and all right of action on the appeal bond herein. WATKINS & GALLAGHER,

Atto. for Appellees."

It is thereupon considered by the court that the judgment of said Circuit Court in this cause rendered be, and the same is hereby in all things affirmed, except as to the said sum of $\$150\frac{00}{100}$ damages herein remitted.

It is further considered that said appellants recover of said appellees all their costs in this court in this cause expended and have execution thereof.

And afterwards, to wit, on the 7th day of August, A. D. 1857, the said appellants presented to the Clerk of said Supreme Court a writ of error in this cause issued from the Circuit Court of the United States, for the Eastern District of Arkansas, and duly allowed by the Chief Justice of our said Supreme Court, and filed a copy thereof in this office, which is in the following words:—

THE UNITED STATES OF AMERICA,
Eastern District of Arkansas.

The President of the United States to the Honorable the Judges of the Supreme Court of the State of Arkansas, greeting:—

Because, in the record and proceedings, as also in the rendition of the judgment of a plea in a certain action of ejectment, which is in the said Supreme Court before you, between Roxana Butler and Edmund Mills, plaintiffs, and William H. Gaines, Maria Gaines, his wife, Robert Belding, Henry Belding, and George Belding, heirs and legal representatives of Ludovicus Belding, deceased, defendants, manifest error has intervened, as is alleged, to the great damage of the said plaintiffs, as by their complaints appear. And we being willing that the error, if hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ: so that you have the same at Washington City on the first Monday of December next, A. D. 1857, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause to be done therein, to correct that error, what of right and according to the laws of the United States shall be done.

Witness, the Honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, this 3d day of August, in the year of our Lord one thousand eight hundred and fifty-seven, and the seal of the Circuit Court of the United States in and for the Eastern District of Arkansas.

[L. S.] Attest, WM. FIELD, *Clerk*.

And at the same time said plaintiffs in error filed their bond, duly approved by the Chief Justice of our said Supreme Court, which is as follows:—

SUPREME COURT OF THE UNITED STATES,
ROXANNA BUTLER AND EDMUND MILLS,
res. in error,
WILLIAM H. GAINES, and MARIA GAINES, his wife, ALBERT BELDING, HENRY BELDING, and GEORGE BELDING, heirs of LUDOVICUS BELDING, deceased.

Know all men by these presents that we, Roxanna Butler, as principal, and Samuel W. Williams, and Sidnor T. Hudson, as securities, are held and firmly bound unto the above named William H. Gaines, Maria Gaines, his wife, Albert Belding, Henry Belding, and George Belding, in the sum of five hundred dollars, to be paid to the said William H. Gaines, Maria Gaines, his wife, Albert Belding, Henry Belding, and George Belding, their executors and administrators, to which payment, well and truly to be made, we bind ourselves

and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals and dated this 5th August, 1857.

Whereas the above named Roxanna Butler and Edmund Mills hath presented a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above entitled suit by the Supreme Court of the State of Arkansas:

Now, therefore, the condition of this obligation is such, that if the above named Roxanna Butler and Edmund Mills shall prosecute their writ of error to effect and answer all damages and costs, if they shall fail to make good their plea, this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

ROXANNA BUTLER, [SEAL.]
SAM. W. WILLIAMS, [SEAL.]
S. T. HUDSON. [SEAL.]

Sealed and delivered in the presence of
MARK W. ALEXANDER.

Approved Aug. 6, 1857. E. H. ENGLISH,
Ch. J. Sup. Court.

STATE OF ARKANSAS,
In the Supreme Court.

In testimony that the foregoing one hundred and twenty-nine pages contain a full, true, and complete transcript of the record and proceedings of said Supreme Court in said cause, except the opinion of the Court and briefs of counsel:

I, Luke E. Barber, Clerk of said Supreme Court, have hereto set my hand and affixed the seal of said court, at my office in the city of Little Rock, this 12th day of November, A. D. 1857.

[SEAL.] L. E. BARBER, *Clerk.*

THE UNITED STATES OF AMERICA,
Eastern District of Arkansas.

The President of the United States to the Honorable the Judges of the Supreme Court of the State of Arkansas, greeting:—

Because in the record and proceedings, as also in the rendition of the judgment, of a plea in a certain action of ejectment which is in said Supreme Court before you, between Roxanna Butler and Edmund Mills plaintiffs, and William H. Gaines, Maria Gaines, his wife, Albert Belding, Henry Belding, and George Belding, heirs and legal representatives of Ludovicus Belding, deceased, defendants, manifest error has intervened, as is alleged, to the great damage of the said plaintiffs, as by their complaint appears, and we being willing that the error, if any hath been, should be duly corrected, and full and speedy justice be done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at